

**BEFORE THE
U.S. DEPARTMENT OF TRANSPORTATION
WASHINGTON, D.C.**

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In the matter of:	:
	:
Notice of Proposed Rulemaking	: Docket No. DOT-OST-2022-0089
Airline Ticket Refunds and Consumer	:
Protections	:
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COMMENTS OF AIRLINES FOR AMERICA

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Airlines for America¹ (“A4A”) respectfully submits comments in response to the U.S. Department of Transportation’s (“DOT” or “Department”) notice of proposed rulemaking, Airline Ticket Refunds and Consumer Protections (hereinafter “NPRM”), which proposes to significantly change DOT’s airline ticket refund requirements.² A4A members annually transport hundreds of millions of passengers to, from and within the United States in a safe, affordable manner and continually strive to provide the highest levels of customer service. We thank DOT for the opportunity to comment and facilitating discussion at the Aviation Consumer Protection Advisory Committee meetings. U.S. passenger airlines have been and remain keenly responsive to customers’ refund interests: during the height of the COVID-19 pandemic, airline refunds exceeded regulatory requirements, internal policies, and the refunds of any other industry; during the on-going pandemic recovery, airlines are refunding consumers at even greater rates in response to consumers’ new and changing purchasing and travel patterns. From January 2020 to September 2022, the largest U.S. passenger airlines issued \$29.3 billion in cash refunds. In the first nine months of 2022 alone, these 11 airlines issued \$8.3 billion in cash

¹ A4A’s members are Alaska Airlines, Inc.; American Airlines Group, Inc.; Atlas Air, Inc.; Delta Air Lines, Inc.; FedEx Corp.; Hawaiian Airlines; JetBlue Airways Corp.; Southwest Airlines Co.; United Airlines Holdings, Inc.; and United Parcel Service Co. Air Canada is an associate member.

² 87 Fed. Reg. 51,550 (Aug. 22, 2022).

refunds, more than for all of 2021. To give consumers even greater purchasing and travel flexibility A4A members also voluntarily eliminated change and cancellation penalties for many fare products and extended for years travel credits issued to passengers holding nonrefundable tickets who cancelled their travel plans during COVID.

I. OVERVIEW

A. A4A's Position

A4A members support DOT codifying its decades-long enforcement policy on ticket refunds, which worked well prior to and during the pandemic. We also support DOT's efforts to define cancellation and significant change of flight itinerary ("SCFI") and offer improvements that are necessary to provide clarity and transparency for the traveling public. We back DOT's proposal that would require ticket agents to continue to share responsibility for refunds. We support these proposals because each would clarify appropriate and objective guardrails for passengers and carriers, ensuring a common understanding without interfering with a healthy and functioning market.

We do not, however, support DOT's proposals providing for non-expiring travel credits for passengers who cancel travel during future public health emergencies or due to concerns around serious communicable diseases. These proposed requirements will not improve public safety, they will result in confusion, undermine the public benefits of lower-priced nonrefundable tickets, be difficult to implement, and convert airlines into the role of an insurer – none of which would benefit passengers.

Of note, these rules, if adopted, would create a forever-refund mandate for airlines and only airlines, not other modes of transportation and not for other segments of the travel industry or other industries. The DOT "unfair" and "deceptive" authority used to regulate here was

modeled on Section 5 of the Federal Trade Commission Act, however the Federal Trade Commission (“FTC”) does not impose similar rules for other modes of transportation. DOT’s proposals for non-expiring travel credits (and even refunds) during a future public health emergency are bad and unjustifiable policy, and DOT fails to establish the necessary legal foundation for the position that current policies for nonrefundable ticketholders constitute an unfair practice. Rather, we offer an alternative that supports providing expiring flight credits to passengers during a public health emergency, drawing on extensive experience during the COVID-19 pandemic to ensure safe travel during a public health emergency.

B. Safety is A4A Members’ Highest Priority

Safety is and always will be the number one priority of U.S. airlines. As an industry, we are constantly meeting or exceeding the highest standards of safety. We are proud that air travel continues to be the safest mode of transportation and that A4A members are global leaders on aviation safety. The airline industry instituted extensive measures based on data and science that enabled passengers to travel safely during the COVID-19 pandemic and, based on lessons learned, is even better equipped to enable Americans to continue to travel safely by air during future public health emergencies.

C. Market Forces Propelled by Deregulation Incentivized Airlines to Enhance Customer Service While Reducing Fares; Government Intervention Would Jeopardize This Progress

Carriers strive to provide the highest levels of customer service from first itinerary search to touchdown and baggage retrieval. From January 2020 to September 2022, the largest U.S. passenger airlines issued \$29.3 billion in cash refunds—on average just under \$1 billion per month. In the first nine months of 2022 alone, these 11 airlines issued \$8.3 billion in cash refunds, more than for all of 2021. A4A passenger carriers also made significant updates to their

travel policies to increase flexibility for the traveling public, none of which were required by regulation. These include:

- issuing billions of dollars in travel credits to passengers holding nonrefundable fares who chose not to travel during COVID-19;
- extending the expiration of those credits for additional years; and
- eliminating change fees for most domestic tickets.

In other words, customers did not lose the value of their purchase because of the pandemic. Further, A4A members work hard to continually improve customer service. In fact, the refund complaint rate to DOT has improved dramatically and is now one-tenth of the rate during the height of the pandemic.³ Industry has delivered on its commitments and invested heavily in the passenger experience to address passengers' concerns and will continue to do so, irrespective of its regulatory obligations. Current DOT authority on airline ticket refunds worked, carriers provided tremendous amounts of refunds to consumers and where appropriate, DOT took enforcement action to address perceived concerns.⁴ While U.S. airlines are the first to recognize that areas for improvement remain, the most recent results from the American Customer Satisfaction Index and the J.D. Power North America Airline Satisfaction Study show that airlines posted the second highest scores in history this year.⁵

To promote consumer choice and competition, A4A member carriers offer nonrefundable fares. Such fares allow airlines to offer dramatically lower-priced tickets in exchange for a range of fare restrictions, greatly expanding consumer access to air transportation. For instance, in

³ The rate of refund complaints decreased from 8.39 per 100,000 U.S. airline passengers enplaned in 2020 to 0.83 in the first nine months of 2022.

⁴ See DOT, *More Than \$600 Million in Refunds Returned to Airline Passengers Under DOT Rules Backed by New Enforcement Actions Issued Today* (Nov. 14, 2022), <https://www.transportation.gov/briefing-room/more-600-million-refunds-returned-airline-passengers-under-dot-rules-backed-new>.

⁵ A4A, *Industry Review: Allocating Capital to Benefit Customers, Employees and Investors* (updated Dec. 15, 2022), available at <https://www.airlines.org/dataset/a4a-presentation-industry-review-and-outlook/>.

1971, prior to deregulation of the U.S. domestic airline industry, only 49% of the U.S. population had ever flown commercially; by 2021, that figure had risen to 90%, in large part due to the availability of lower-priced nonrefundable fares. Through September 2022, data from the Bureau of Labor Statistics (“BLS”) shows that fares—excluding pandemic-depressed 2020 and 2021 fares—were at an all-time low, when adjusted for inflation. Specifically, adjusting the January-October Consumer Price Index (CPI) “airline fares” component for the CPI “All Items” value in each year—airfares in real terms fell 30.3% from 2000-2022, 23.5% from 2010-2022 and 6.8% from 2019-2022.⁶ These savings are reflected in the significant pricing difference between restricted and more flexible fares.

Nonrefundable tickets are extremely popular, with the vast majority of leisure travelers—and some business travelers—opting for such tickets’ lower prices. DOT acknowledged this axiom nearly 20 years ago when it denied a petition asking DOT to prohibit change fees, stating: “[t]hus the lower price for nonrefundable tickets is a trade-off for passengers agreeing to a restriction that allows a carrier to manage its inventory and cash flow. There are usually several fares available on any given flight, and the prices vary depending on the extent of the conditions with which the passenger is willing to comply, including the ability to cancel a ticket and receive a full refund.”⁷ The public benefits that have long existed with lower priced nonrefundable fares, publicly supported by the DOT, are exactly the type of innovation envisioned by the Airline Deregulation Act. These benefits could easily be reversed by over-regulating fare restrictions that have developed over the decades through competition in the marketplace with

⁶ Source: Bureau of Labor Statistics (CPI series CUSR0000SETG01 and CUUR0000SA0); for information on the BLS methodology for “airline fares,” see <https://www.bls.gov/cpi/factsheets/airline-fares.htm>.

⁷ DOT Order 2003-3-11 (March 18, 2003); DOT reaffirmed that a countervailing benefit of the NPRM is “the nonrefundable ticket category that offers lower prices to consumers.” See U.S. Department of Transportation Response to Questions from Airlines for America and the International Air Transport Association Regarding the Notice of Proposed Rulemaking (“DOT Answer”), page 3 at DOT-OST-2022-0089-5032.

the potential to vastly reduce the availability of lower fare options to the detriment of the flying public.

The non-expiring travel credit proposals under the NPRM, rather than being pro-consumer, will harm consumers over the long term by fundamentally and adversely altering the market for nonrefundable fares. In several scenarios, airlines can reasonably be expected to encounter difficulty re-selling seats returned to inventory by nonrefundable ticket holders who cancel travel shortly before departure with the assurance of a non-expiring travel credit. The only way to offset the resulting revenue loss will be adjusting prices for nonrefundable tickets. Given the Biden administration's stated commitment to providing inflation relief for millions of American households, the NPRM's travel credit proposal, which will directly impact more price-sensitive travelers and equity in air travel, is particularly ill-conceived. And travel credits exist today, they just don't exist forever.

In the end, the NPRM is based on the false and misleading premise that customers lack options to protect themselves financially from exposure to unexpected events or scenarios like a public health emergency. For decades, however, A4A member carriers have offered consumers fully refundable fares. These fares provide critical flexibility and peace of mind for customers who may have to cancel a trip for any number of reasons, including passengers traveling during a public health emergency or local or destination outbreak of a communicable disease and where the consumer or a family member have known underlying conditions. To account for the higher risk of having to cancel or postpone travel, a passenger may choose a refundable fare. Also, the NPRM totally ignores the availability of travel insurance, giving additional protections to all consumers and fare types.

As detailed below, airlines compete intensely, not only on price but also on the associated service elements, with differing approaches to defining cancellations and significant delays for purposes of refund eligibility. One of the unintended consequences of DOT’s proposal, if finalized, would be the reduction in airlines’ incentives to innovate and compete with different customer service options, which ultimately benefit consumers.

II. A4A GENERALLY SUPPORTS DOT’S PROPOSAL REGARDING REFUND STANDARDS FOR CANCELLATIONS AND SIGNIFICANT CHANGES TO ITINERARY

A. Improvements to Enhance Transparency

We generally support the NPRM’s central proposal to define cancellation and SCFI for purposes of refund eligibility, but strongly urge DOT to consider and adopt improvements that will benefit passengers and carriers by providing additional transparency and clarity. The final rule should adopt several definitions that will ensure all parties use the same clearly defined terms. These include:

- a. Refunds – unused ticket value returned to purchaser in the original form or cash equivalent form of payment. If the original form of payment is in the form of Compensation, Flight Credit, or Travel Credit, the Refund may be issued in the same form (or similar non-cash equivalent).
- b. Compensation – any amounts paid to a customer, not including Refund or Flight Credit/Travel Credit.
- c. Flight Credit – partially or wholly unused value of an airline ticket.
- d. Travel Credit – electronic miscellaneous document (“EMD”) carrying value as a document. Paper voucher is a paper document carrying a value.
- e. Interline Tickets - industry rules already define the Interline settlement process including refunds. The ticketing carrier rules are followed and handles the request including subsequent settlement with the operating airline. An individual carrier is responsible only for the tickets they issue and cannot refund another airline’s issued ticket.

Recognizing these standard and industry-wide terms will facilitate a consumer's understanding of their rights, especially when the consumer is purchasing his or her flight or changing travel plans. The Department should also adopt reasonable requirements that reflect commercial realities in the airline industry. Airlines sell tickets up to 330 days before the flight and schedule changes may occur many months before the departure date. Given these realities and, in particular, the significant advance notice that customers typically have when a SCFI occurs, the Department should prohibit passengers from sitting on their rights for a refund for an unreasonable amount of time and in a manner that forecloses travel opportunities for other travelers interested in that flight. Considering the very diverse fares and policies of airlines, the marketplace and individual airlines should determine the reasonable time to require a passenger to request a refund and the Department should hold airlines to those determinations.

We also strongly recommend that the Department ensure clarity for customers in the final regulations. Specifically:

- The Department should finalize its proposal to clarify in its regulations that, while customers have a refund choice regarding cancellation or SCFI, if the passenger chooses alternative transportation offered by the carrier, the carrier is not required to provide a refund.⁸
- The Department should clarify that airlines can concurrently offer a refund and credit for the value of the unused ticket. The credit offer can include immediately issuing a travel credit with the opportunity for the customer to request that the travel credit be converted to a refund back to original form of payment. For passengers looking to rebook their travel plans quickly, the credit is an essential customer-service tool because it is available almost instantaneously. By contrast, requiring a passenger to proactively decline a refund will delay receipt of the travel credit. Not issuing a credit will leave a passenger's ticket in purgatory, if the passenger does not immediately communicate a preference for a travel credit or refund. In addition, if the passenger is not the purchaser, any automatic refund requirement deprives the passenger of the benefit of receiving flight credit or other compensation.

⁸ The Department confirmed this clarification in a response to a comment period extension request, further supporting that DOT should adopt this clarification as proposed. DOT Answer page 4.

- For a significant schedule change, it should not be a deceptive practice for a carrier to notify a customer that they may be entitled to a refund (rather than unequivocally are) since a number of factors, including subsequent re-accommodation by the carrier or at the request of a passenger, would ultimately impact whether a refund is unequivocally available. It would also be difficult for carriers to tailor their messaging to customers based upon flight delay criteria (example, rolling delays and re-accommodation followed by much later self-cancels).

For the reasons explained in our comments to the Department’s proposed rules on denied boarding compensation,⁹ which we incorporate herein, we also support DOT’s proposal regarding alternative forms of payments—DOT should permit carriers to offer alternative forms of compensation, including online discount codes.¹⁰

B. DOT Should Refine its Proposed Definition of Cancellation

We generally support DOT’s proposed definition of cancellation, but request that the final rule include a few clarifications that are consistent with DOT’s proposal. First, the final rule should clarify that when a scheduled flight does not operate as planned, but the carrier nonetheless accommodates the passenger on a different flight, that scenario does not qualify as a SCFI and a cancellation has not occurred (and thus no refund is due). In other words, the definition of cancellation should exclude circumstances in which the passenger is accommodated with an itinerary that does not otherwise fall within the scope of an SCFI. This adjustment to DOT’s proposal will incentivize carriers to continue to provide passengers alternative transportation that minimizes inconvenience and disruption for the customer’s travel plans. If the originally scheduled flight is cancelled, an alternate flight offered within the SCFI period

⁹ A4A comments are available at <https://www.regulations.gov/comment/DOT-OST-2019-0025-0015>.

¹⁰ The final rule text should also make clear that the time requirements for processing refunds (7 days for credit card purchases and 20 days for purchases in other forms of payment) are in reference to business days and not calendar days, consistent with longstanding DOT enforcement precedent and Regulation Z, 12 C.F.R. Part 1026.

should be acknowledged as a means to accommodate passengers. Airlines should not be penalized by having to provide refunds for non-refundable fares when the airline facilitates a passenger's completion of their travel.

Second, a simple change of flight number should not qualify as a cancellation, if a passenger is on the same route as purchased that does not otherwise fall within the scope of an SCFI. Flight numbers are changed for operational reasons, and such changes, standing alone, in and of themselves, should not entitle a passenger to a refund under the final rules. The Department should recognize that a flight number change (wholly administrative in nature) should be irrelevant to the passenger, so long as their travel plans are met within the confines of the final SCFI rules.

Third, flights that are scheduled on day 1 but get delayed after 12:00 AM and do not exceed SCFI standards should not be deemed cancelled simply because they depart after 12:00 AM and on the next day. For example, a flight that is scheduled at 11:30 PM on Day 1 and is rescheduled for 12:30 AM on Day 2 (potentially with a different flight number due to administrative reasons) should not be deemed cancelled. The controlling factor should be whether the flight exceeds SCFI, and not a minor schedule change that happens to cross past midnight.

Finally, DOT should clarify that the NPRM is separate and distinct from Part 234 reporting, and the NPRM does not change Part 234 reporting requirements. This clarification is important because Part 234 and the NPRM have different definitions of cancellation to serve different purposes. Without clarifying a distinction between Part 234 and the NPRM, airlines that report under Part 234 will have many legitimate questions whether Part 234 reporting will change after this final rule is published.

C. DOT Should Refine Its Proposed Definition of Significant Change of Flight Itinerary

A4A generally supports DOT defining SCFI to provide greater transparency for the public and carriers. The DOT should address several problematic areas and we suggest several improvements to increase clarity for consumers.

a. Time changes

The final rule should not adopt both a departure and an arrival standard. This would unnecessarily complicate the issue for passengers and airlines and, most importantly, create a conflict when the arrival time does not exceed the SCFI requirements, but the departure time does. The final rule should adopt one single standard and that should be maximum arrival time. This approach is consistent with DOT's focus on arrival times, particularly in publicizing airline on-time performance (*e.g.*, the A14 metric) which was established for the benefit of consumers and their travel planning purposes. The industry-preferred definition is from the time of scheduled arrival, [4] hours delay for domestic and [8] hours delay for international. The international standard should apply throughout the entire itinerary, to all segments, even for domestic legs. These standards strike the right balance between ensuring passengers get to their final destination and providing enough time for carriers to offer reasonable options to complete travel.

The DOT's proposed alternative tiered approach, based on originally scheduled total travel time, should not be adopted because it is largely unworkable from an airline operational standpoint.¹¹ Implementing a matrix of original scheduled total travel time *and projected* delayed arrival or early departure introduces too many undefined variables that can change in

¹¹ See 87 Fed. Reg. 51,560.

real time. For example, the NPRM does not define “projected,” when a projection must be made, and the result if the trip does not meet the projection. The NPRM also does not address single vs. multi-segment flight itineraries causing consumer confusion, and resulting in less clarity and less transparency to passengers and carriers.¹²

b. Change of origination or destination airport

DOT should exclude the change of an origin or destination airport to a “co-terminal airport” (as defined by the Transportation Security Administration (“TSA”)) as an SCFI because the federal government recognizes that “co-terminal airports” are sufficiently close in proximity to generally meet the consumer’s travel plans.¹³ We agree with DOT’s determination that a change in connecting airports is not considered an SCFI and does not trigger a refund. Getting to a destination location (through co-terminal airports) within the SCFI should be the focus, not the route the passenger takes to get there. In fact, different routings may be more efficient in carrying the passenger to his/her destination as soon as possible and reduce extended connecting wait times.

c. Increase in the number of connection points

We oppose the proposal that an increase in the number of connection points automatically constitutes an SCFI that requires a refund, because adding a connection does not mean the customer will necessarily arrive at the destination significantly later than the original arrival time. The standard for an SCFI in such circumstances should be the number of hours DOT determines is an unacceptably long arrival delay, rather than changes to the routing used to get to the passenger to his or her destination. This proposal exemplifies the risk of unintended

¹² See *id.*

¹³ TSA Approved Co-terminal Airports Listing, Docket No. TSA-2001-11120.

regulatory consequences: by imposing unnecessarily rigid regulatory restrictions, DOT will constrain carriers' ability to consider all available options to re-route passengers to their destination as quickly as possible. Moreover, the risk of an extended arrival delay that may result from additional connections remains covered by a single arrival-based SCFI standard.

d. Different Aircraft with Significant Downgrade of Available Amenities and Travel Experiences

The NPRM strays from its core regulatory focus on refunds and significant changes into excessive regulation of the marketplace in contravention of DOT's specifically limited regulatory mission under the Airline Deregulation Act. We oppose the proposal to categorize a significant downgrade in amenities or travel experiences as an SCFI because the concept is too broad and subjective. Moreover, the terms used in the proposed regulatory text relating to amenities and travel experience are undefined, vague, and would deprive passengers and carriers of fair notice of what constitutes a significant downgrade. Overall, this proposal is fundamentally contrary to the Department's objective of achieving refund certainty for customers and airlines.¹⁴ The only time a downgrade should trigger a refund is for someone who uses a mobility aid and the mobility aid does not fit in the rebooked aircraft—an objective and fair standard for the passenger and the airline.

Passengers have subjective views on the significance of amenities and travel experiences on different aircraft. In the absence of clear guidance, customers may assert that routine changes in on-board amenities or seat configuration are a "significant downgrade" that would trigger a refund. For example, some passengers may prefer streaming Wi-Fi, some may prefer live

¹⁴ The Department refused to define "comparable amenities," "Travel experiences," and other terms in response to a comment period extension request, reinforcing concerns that without defined standards the RIA is unable to meet Executive Order 12866 requirements to reach a reasoned determination that the proposal's benefits outweigh the costs. See DOT Answer page 3.

television, and some may prefer a long list of movies. Passengers may have different seating preferences such as leather or cloth seat covers, how far a seat reclines, exit row availability, if seating impacts when a passenger boards, and window versus aisle seats. Some passengers may feel strongly about whether food and beverages constitute a significant downgrade.

The DOT also fails to consider the relationship and interplay between a passenger's right to refund for the entire flight for such "significant downgrade" and the DOT's proposal to require airlines to refund passengers for ancillary services purchased, but that are not received. Customers and airlines would be caught in the unresolvable question of whether a full flight refund or ancillary service fee refund are due if DOT adopts the NPRM as proposed.

If the final rule provides that any other "significant downgrade" in amenities and travel experiences renders a passenger eligible for a refund (which it should not), the final rule should require carriers to (i) establish their own criteria for a refundable significant downgrade in amenities and (ii) publish such criteria on their primary website. Under this approach, the DOT can hold carriers to the criteria they have established and published, similar to how DOT today holds carriers to assurances included in their published customer service and tarmac delay contingency plans.

e. Refunds required in original form of payment

As explained above,¹⁵ we support DOT's proposal to allow a carrier the choice to offer passengers an alternative form of payment (but are not required to do so) in lieu of a refund (back to the original form of payment), because this provides more flexibility and choice to passengers.

¹⁵ See A4A comments Section II(A)(e) page 7.

f. Refund Amount Including Taxes

We request that DOT permit carriers to refund passengers the full amount paid for the ticket, but airlines should not be required to refund government taxes, fees, and charges that are nonrefundable as a matter of applicable law. In other words, when a government entity prohibits refunding a tax or fee, carriers should not be required to refund such tax or fee to passengers.

g. Early/Delay

Once a customer accepts an itinerary change within the SCFI standards, such acceptance should reset that customer's itinerary for purposes of calculating any future SCFI. For example, if a domestic ticket's scheduled arrival was 10:00 AM and there is a schedule change to arrive at 11:00 AM, the SCFI should thereafter be determined from the 11:00 AM scheduled arrival time. Some carrier systems do not retain and track original itinerary times. Moreover, airlines have established significant flexibility in their policies, both change and cancellations, to afford customers the opportunity to seek alternative transportation upon the initial itinerary change.

h. Voluntary Changes

We request that DOT explicitly state in the final rule that a passenger who voluntarily cancels a ticket prior to a carrier-initiated SCFI or cancellation does not qualify for a refund because the carrier's obligations to transport the passenger on that itinerary terminated upon the passenger's voluntary cancellation. Proactively clarifying this point will provide greater certainty and reduce carrier and passenger confusion.

* * * * *

III. A4A OPPOSES DOT’S PROPOSAL ON NON-EXPIRING TRAVEL CREDITS/VOUCHERS DUE TO PUBLIC HEALTH EMERGENCIES AND/OR SERIOUS COMMUNICABLE DISEASES

A. Overview

As noted at the outset of section II above, A4A supports the core of the NPRM, which is to regulate refunds by defining the terms “cancellation” and “significant change in flight itinerary” to standardize criteria for refund eligibility and give consumers clear and consistent rights to refunds. A4A, however, strongly opposes aspects of the NPRM where DOT seeks to extend its regulatory mission beyond its statutory authority and expertise. Specifically, A4A opposes DOT’s proposals to require carriers to provide *non-expiring* travel credits or refunds to passengers holding *non-refundable* tickets and who are unwilling or unable to travel. These proposals, if adopted, will expose airlines to rampant fraud and abuse that airlines cannot reasonably prevent.

While DOT is proposing to allow carriers to require passengers to provide government orders, agency public health guidance or medical statements (as applicable) to support their claims for credits/vouchers, this proposal will undoubtedly open the floodgates to untruthful claims that would be difficult and/or impracticable for carriers to validate (e.g., passengers who are healthy, but no longer wish to travel and assert that they are ill and unable to travel in order to avoid the restrictions and ticket expirations on their fares). Similarly, medical note fraud was pervasive for emotional support animals until DOT finally revised its regulations in 2021; we anticipate a new cottage industry will emerge to supply fraudulent forms for a fee, if this proposal is finalized. These proposed requirements would also necessitate that airlines collect and analyze customers’ health information to substantiate the voucher request, which has privacy and security implications that merit careful examination and will be exceedingly difficult for airlines to manage.

These proposed requirements would also be a disservice to passengers by introducing many undefined, unclear, or conflicting mandates that rely on subjective standards that would apply to an unlimited number of travel scenarios. In other words, DOT mandates would require that airlines treat similarly situated consumers differently, an unfair result for consumers. Additionally, DOT’s “safety” justification claimed in the NPRM (*i.e.*, non-expiring flight credits will somehow dis-incentivize travel by individuals with concerns about a serious communicable disease (“SCD”), thereby “avoiding potential harm to themselves and others in the aviation system”) is directly contradicted by the DOT’s Regulatory Impact Analysis (“RIA”) statement that the NPRM would not decrease the spread of SCD “by a measurable amount.”¹⁶

For the reasons discussed below, the non-expiring nature of the proposed travel credit requirement is highly problematic and impracticable (if not infeasible) to implement – raising significant financial, document/record retention, distribution, tax, legal, and market-manipulation issues that the Department failed to consider when it developed the proposal.

B. DOT Has Failed to Establish the Required Legal Justification for its Travel Credit/Voucher Proposal

The NPRM attempts to justify mandating non-expiring travel credits in the statutory authority section by reference to both the DOT’s Unfair and Deceptive Practices (“UDP”) authority under 49 U.S.C. § 41712 (“Section 41712”) and its “safe and adequate air transportation” authority under 49 U.S.C. § 41702 (“Section 41702”). In both statutory analyses, the NPRM repeatedly claims authority to regulate the safety of passengers during a future public health emergency (“PHE”) or when faced with an SCD. A practice is “unfair” if it causes or is likely to cause substantial injury, which is not reasonably avoidable, and the harm is

¹⁶ RIA page ii. Similarly, the NPRM states, “[W]e do not expect that the proposed rule would measurably decrease the spread of serious communicable disease ...” 87 Fed. Reg. at 51,573.

not outweighed by benefits to consumers or competition.¹⁷ Under the unfair and deceptive practices (“UDP”) analysis, DOT states in a conclusory fashion that it is an unfair practice for an airline or ticket agent to not provide non-expiring travel credits:

“to consumers who are restricted or prohibited from traveling by a governmental entity due to a serious communicable disease (e.g., as a result of a stay at home order, entry restriction, or border closure) or are advised by a medical professional or determine consistent with public health guidance (e.g., CDC guidance) *not to travel to protect themselves or others from a serious communicable disease.*” [emphasis added].¹⁸

The NPRM further states that consumers are substantially harmed when they pay for a service, but do not travel because they were advised not to do so *to protect themselves or others* from an SCD. The NPRM also states that such harm is not reasonably avoidable because the only way to avoid the harm is to disregard direction from government entities or medical professionals not to travel and *risk inflicting serious health consequences* on themselves and others.¹⁹ The NPRM further states, in conclusory fashion and without support, that a consumer’s potential loss of the ticket’s value is not outweighed by countervailing benefits.²⁰

The NPRM seeks to justify non-expiring travel credits by citing statutory authority standing for the proposition that air carriers are required to provide safe and adequate interstate air transportation, the same authority on which DOT relied when adopting regulations that restricted smoking on air carrier flights.²¹ The Department determines in the NPRM that passenger concerns about being seated next to, or in close proximity to, a passenger who may have an SCD justify the use of its authority to ensure safe and adequate interstate air transportation under Section 41702.

¹⁷ 14 C.F.R. § 399.79(b).

¹⁸ 87 Fed. Reg. 51m551.

¹⁹ *Id.*

²⁰ *Id.*

²¹ 49 U.S.C. § 41702.

However, in direct contradiction to NPRM statements that this proposal is necessary to protect passengers from an SCD, the RIA flatly states:

“With a public health emergency, net benefits are likely to be negative. While benefits are uncertain, *we do not expect that the proposed rule would decrease the spread of serious communicable disease by a measurable amount.*” [emphasis added]²²

The RIA further states:

“Under a baseline in which the COVID-19 pandemic continues or a new public health emergency occurs, the proposed rule would have mixed effects. We expect that passengers would defer to guidance from public health authorities when making travel decisions. For this reason, the additional incentive to cancel travel from a non-expiring travel credit *would have limited effect on the spread of serious communicable diseases.*” [emphasis added]²³

Simply put, the Department asserts that its proposal is in the interest of safety, but concurrently acknowledges that its proposal will largely do nothing to accomplish safety—an unresolved contradiction that renders the proposal unjustifiable and beyond the Department’s authority.

As has been demonstrated during the current pandemic, passengers can generally travel by air safely during a PHE or against the backdrop of an SCD. In those instances where travel is not safe, a government entity with the requisite expertise to make such a judgment—not the Department—may prohibit air travel, in which case carriers will cancel flights and passengers will be entitled to a refund under DOT’s longstanding enforcement policy or, as proposed in the NPRM, new section 14 C.F.R. § 260.6. And finally, market forces cannot be ignored, carriers issued and extended credits until the country was through the worst of the pandemic.

²² RIA page ii.

²³ RIA page 26.

As noted above, the justification for unexpiring flight credits under the UDP analysis of Section 41712 and the safe and analysis under Section 41702 is in direct contradicted with the RIA and is therefore arbitrary and capricious.²⁴ Any harm caused to the general public and passengers during a communicable disease outbreak is a *public* health emergency and as tragic as such a harm can be, it is not caused by carriers or their “practices.” Thus, the NPRM fails to satisfy one of the key elements of its own three-part “unfairness” test, which is a predicate for the adoption of regulations requiring carriers to issue travel credits (or refunds) in response to a PHE or SCD.

We disagree with the flawed assumption that underpins the NPRM’s UDP analysis-- a carrier practice has caused (or exacerbated) a harm that DOT needs to address by mandating non-expiring flight credits. Moreover, the Department cannot justify mandating non-expiring travel credits based on protecting passengers from a PHE or SCD on the one hand, while simultaneously concluding in the RIA that such a requirement would not “meaningfully” decrease the spread of a communicable disease—the very harm (which the airlines do not cause or exacerbate) the NPRM seeks to address.

For a federal agency proposal to be valid, it must pass muster under a cost-benefit analysis, as required by Executive Orders 12866 and 13563. It is beyond question that this proposal would impose significant costs, not just in terms of the costs to airlines to issue and honor travel credits (and in some cases potentially refunds), but also because the economic effect of those costs may ripple through the industry, resulting in significant service reductions and upending the economics underlying nonrefundable fares. As noted above, DOT’s own RIA rejects the NPRM’s claim of any measurable benefit.

²⁴ 5 U.S.C. § 706(2)(A)

A regulatory proposal that claims benefits (protecting passengers) that its own RIA refutes (little to no impact on the spread of a serious communicable disease) cannot be said to have made a reasoned determination that the proposal's benefits outweigh the costs.²⁵ On the contrary, a regulatory requirement formulated on such a proposal, if adopted, would be arbitrary and capricious.²⁶

The NPRM provides an “unfair” analysis for (a) codifying the existing refund rule that when a carrier cancels or significantly delays a schedule, a refund is due and (b) non-expiring flight credits are due for certain circumstances during a public health emergency or serious communicable disease.²⁷ However, the NPRM fails to conduct an “unfair” or “deceptive” analysis for (a) defining cancelations or significant schedule delay and (b) requiring carriers to provide refunds instead of vouchers if they receive future government financial assistance. Failing to provide a UDP analysis for these two proposals violates DOT UDP regulations, which state:

“When issuing a proposed or final regulation declaring a practice in air transportation or the sale of air transportation to be unfair or deceptive to consumers under the authority of 49 U.S.C. 41712(a), unless the regulation is specifically required by statute, the Department **shall** articulate the basis for concluding that the practice is unfair or deceptive to consumers as defined in § 399.79.”²⁸

The Department claims that it provided an “unfair” analysis for both provisions in response to a comment period extension request.²⁹ However, DOT is unable to cite any analysis within the “Statutory Authority” or “Unfair Practice” sections of the NPRM that addresses each element of an “unfair” practice for the proposed definitions of cancelation or SCIF (or provide

²⁵ Executive Order No. 12,866, Section 1(b)(6), 58 FR 51735 (Oct. 4, 1993).

²⁶ 5 U.S.C. § 706(2)(A).

²⁷ 87 Fed. Reg. 51,551 – 51,552.

²⁸ 14 C.F.R. § 399.75(c).

²⁹ See DOT Answer, page 2 at DOT-OST-2022-0089-5032.

the “unfair” analysis in the comment period extension response); instead the Department cites material from the “Background” section that does not address each “unfair” element as required by DOT regulations.³⁰ In addition, the Department is unable to cite analysis in the NPRM that specifically addresses why it would be unfair not to provide a refund if the government provides significant financial assistance to an airline.³¹ Simply including the phrase “and under certain circumstances refunds” in the NPRM UDP analysis of travel credits, does not meet DOT UDP regulatory requirements to address each element of “unfair” for refunds required when a carrier receives future significant financial assistance.

DOT should eliminate all the travel credit proposals because the RIA is correct: this NPRM will not meaningfully impact the spread of an SCD. Additionally, the Department has failed to show there will be any harm caused by carriers during a future PHE or during risk of an SCD. As a consequence, DOT has failed to establish an unfair (or deceptive) practice to support its proposed exercise of its section 41712 authority or that travel credits are required in order for carriers to provide safe and adequate air transportation under section 41702.

C. Readily Available Market Solutions Exist to Avoid Potential Harms

The NPRM states in several places that it is the Department’s goal to protect consumers’ financial interests when disruptions to their travel plans are caused by public health concerns beyond their control.³² The existence of a PHE or SCD and the harmful impacts that result from these tragic public health events is also not within the control of carriers. Carriers should not be required by regulation to underwrite the risk and harm to consumers of a *public* health concern, especially when there are market solutions available, such as the option to purchase

³⁰ *Id.*

³¹ *Id.*

³² 87 Fed. Reg. 51550

nonrefundable / changeable with a fee fares or refundable fares, travel insurance, and a growing number of carrier policies that allow for flexibility to accommodate changes in customers' travel plans (e.g., voluntarily waiving change fees and extending expiration dates for travel credits). To be clear, consistent with our message in the ACPAC discussions, we are suggesting these market solutions as an alternative to DOT's travel credit proposals and we are not raising these solutions with regard to the definitions of cancelled flight or SCFI as the preamble erroneously insinuated.³³ The NPRM *completely* failed to consider refundable fares, travel insurance, and fee-free itinerary changes, all of which are readily available alternatives to DOT's proposal to supplant market forces with regulations mandating travel credits. Most importantly, this abject failure to consider these alternatives, as well as the costs and benefits of such alternatives against its proposal, puts the NPRM in direct contravention of the Department's statutory and Executive Order rulemaking obligations.

a. Travel insurance benefits

Travel insurance continues to be an extremely popular option for passengers' interest in safeguarding their travel investments. At its peak in 2018, approximately 65.8 million people were protected by more than 46.3 million travel insurance plans with nearly \$3.8 billion spent in the U.S. on travel protection. The average cost of travel insurance is between 4% to 8% of trip costs.³⁴ The average U.S. domestic roundtrip fare is \$315.75, so the average travel insurance cost is \$12.60 to \$25.26.³⁵ Coverage can include many products such as trip cancellation and interruption, lost luggage, emergency medical, and medical evacuation.³⁶

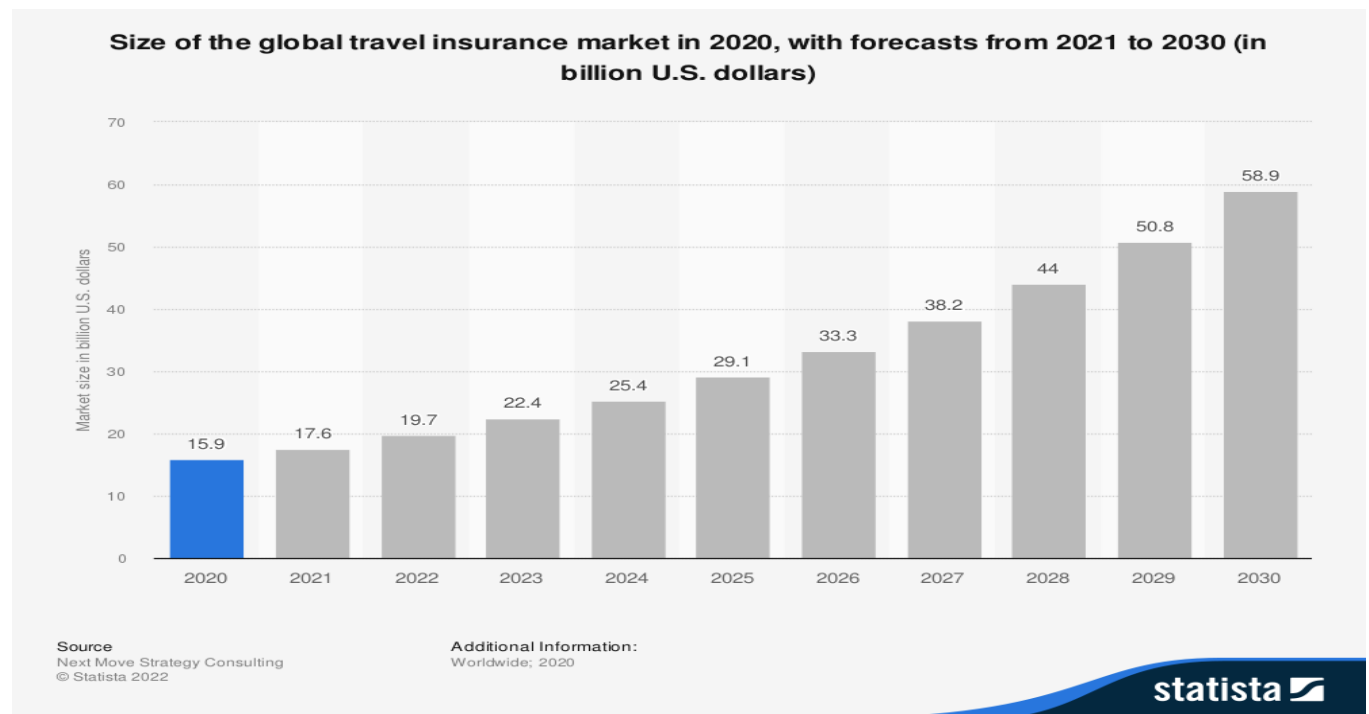
³³ 87 Fed. Reg. 51551

³⁴ See U.S. Travel Ins. Ass'n, <https://www.ustia.org/faqs.html>

³⁵ See A4A, <https://www.airlines.org/dataset/annual-round-trip-fares-and-fees-domestic/>

³⁶ See U.S. Travel Ins. Ass'n, http://www.ustia.org/uploads/2/4/8/8/24887869/ustia_press_release_2019_new_study.pdf

Global forecasts predict a tripling of travel insurance consumption in the next decade from an estimated \$15.9 billion in 2020 to an estimated \$58.9 billion in 2030. This significant global investment by consumers demonstrates the vital role of travel insurance and why the Department should consider this vibrant industry and the products they offer as an alternative to prescriptive regulation.



i. Refundable fares

Overlooked in the NPRM is the fact that the marketplace offers consumers refundable fares for a variety of circumstances including when a consumer recognizes a possibility that they require flexibility when traveling. Refundable fares provide consumers an option to account for those situations where there is risk of having to cancel a trip. For passengers traveling during either a PHE or local or destination outbreak of an SCD, the customer may choose a refundable fare to account for the higher risk of having to cancel or postpone travel.

The RIA recognizes that the current marketplace prices tickets based on market conditions.³⁷ That dynamic does not require non-expiring travel credits for nonrefundable fares. The implication of the RIA statement below is that the natural market reaction to government intervention, in this case the NPRM, may result in a fundamental, market-manipulating shift to higher nonrefundable fares. The RIA states:

In a well-functioning market, the lower price for a nonrefundable ticket would incorporate the risk to the consumer of not being able to use a credit or voucher as well. While the types and levels of compensation for missed flights vary, they are like other types of insurance payments in that they are considered transfers in a benefit-cost framework rather than benefits or costs.³⁸

b. Waived change fees

Implicit in the NPRM's travel credit proposal is an incorrect assumption that most consumers holding nonrefundable tickets are left with little recourse when they are unable or unwilling to travel. This is not the case. In fact, all A4A members have eliminated change fees for the majority of their fare products. As a consequence, so long as consumers with eligible nonrefundable fares cancel their travel in advance of scheduled departure (regardless of the reason), they receive a travel credit for which the full value of their original ticket can be applied to future travel. Moreover, throughout the COVID-19 pandemic, A4A members repeatedly made policy decisions to extend the validity of previously-issued travel credits, not because they were required by DOT to do so but because doing so was in their customers' best interests. Given these market realities, the NPRM's travel credit proposal is the quintessential solution in search of a non-existent problem.

³⁷ RIA page 7.

³⁸ *Id.*

These currently available market options – nonrefundable fares, travel insurance and waived change fees – protect passengers’ health and financial interests without (a) introducing subjectivity which provides less transparency and causes consumer and carrier confusion or (b) introducing a tremendous opportunity for mistaken beliefs, alternative interpretations, and fraud that will negatively impact consumers and carriers, and (c) negatively impacting nonrefundable fare offerings. In sum, the market for airline fares is a “well-functioning market,” without any evidence (from DOT or any other party) of a market failure that would justify extraordinary governmental intrusion via the type of regulations DOT has proposed.

D. Non-expiring Travel Credits Will Lead to Rampant Fraud and Abuse, Exposing Many Carriers to Significant Financial and Accounting Liabilities.

DOT’s travel credit proposals are inconsistent with the public interest in 49 U.S.C. § 40101 because they threaten “the *availability of a variety of adequate, economic, efficient, and low-priced services.*”³⁹ The ADA admonishes the DOT to place “maximum reliance on competitive market forces,”⁴⁰ but the DOT’s travel credit proposal would do the opposite, supplanting DOT regulation for the “well-functioning market forces that have consistently delivered lower fares to consumers. The very broad and undefined nature of these travel credit proposals will threaten the availability of the lowest fares offered by carriers that provide the greatest public access to air transportation. As discussed below, the DOT disclosed at the August 2022 ACPAC meeting that it (i) purposely did not define any of the subjective standards included in the three travel credit proposals and (ii) would make determinations of whether carriers are compliant with new DOT refund rules on a case-by-case basis.”⁴¹ Such an ad hoc

³⁹ 49 U.S.C. § 40101(a)(4).

⁴⁰ 49 U.S.C. § 40101(a)(6).

⁴¹ ACPAC Meeting August 22, 2022 (report pending)

adjudicatory approach is problematic under the Administrative Procedure Act, as it would involve new regulatory obligations after rulemaking, *i.e.*, changing travel credit requirements at the same time the rules are being applied, without opportunity for public notice and comment.⁴²

A lack of definition will inevitably result in passengers pursuing travel credits under attenuated and dubious circumstances. Based on experience, A4A members expect a significant number of passengers will seek to take advantage of undefined DOT standards by applying for travel credits on specious circumstances. The DOT is creating a fertile environment for mistakes, interpretations and opportunism, as was the case when the emotional support animal (“ESA”) accommodation rule existed, except that the scale of confusion for the limited class of passengers seeking to carry ESAs is several orders of magnitude less than the general class of all passengers who could seek travel credits.

When passengers determine they can take advantage of undefined or loosely defined DOT travel credit rules, the result will be a deluge of requests and massive issuance of unjustified non-expiring travel credits that will sit on carriers’ books. The consequence of the contemplated requirements will be an increase in costs for the travelling public. In fact, the DOT explicitly states in the RIA, carriers will need to price the cost of such DOT mandated travel credits into their fares.⁴³ Undoubtedly and as explicitly recognized by the DOT, the accounting for billions in new travel credits will impact fares, jeopardizing the progress that has been accomplished since deregulation – which spurred unprecedented access to the air transportation system.

⁴² 5 U.S.C. § 553.

⁴³ RIA page 7.

The consequences of the impacts described above will be to diminish the availability of a variety of adequate economic, efficient, and low-priced services in direct conflict with the Airline Deregulation Act. The DOT should abandon its ill-conceived travel credit proposals to avoid the detrimental impacts on the flying public and breaching congressional directives.

In addition, the non-expiring nature of the credit/voucher proposal may cause substantial financial and accounting consequences for a majority of A4A members – many of which are prohibitive and none of which the Department considered in its cost-benefit analysis.

- *Financial* – absent a reasonable time-limit on credits, airlines may build up a significant liability on their accounting books that will materially and unfairly harm their credit ratings.
- *Document/Record retention and database access issues* – under the non-expiring credit proposal, airlines could be unreasonably required to keep all customer ticket and voucher records permanently and maintain access to records databases *for decades* so that customers can continue to ticket using vouchers. This would be administratively burdensome and costly, with limited (if any) benefits for consumers.
- *Distribution/Technical* – GDS, OTA, and other industry transaction systems are not configured for elimination of expiration dates and need a date populated to function. The NPRM may also require manual removal of expiration dates for some tickets after issuance and requires technology compatible with both expiring and non-expiring tickets.
- *Tax issues* – Taxes remitted on air travel to the U.S. and foreign entities cannot be refunded and repurposed if the customer elects not to travel within a reasonably short timeframe. Airlines could potentially have to absorb all taxes paid to various taxing authorities for which we could request a refund because the ticket had not been reissued within a reasonable timeframe after tax remittance.
- *Legal Issues* – Vouchers may be deemed abandoned property under international laws, requiring an escheat compliance process. To the extent state abandoned property laws are not pre-empted, compliance with these requirements would necessitate state compliance as well. In addition, vouchers may be deemed property for estate and probate purposes after death of the passenger or voucher owner. This may require administration

of vouchers many decades after issuance and long after the customer's travel concerns have been mitigated.

E. DOT's Travel Credit Proposal is Inconsistent with Federal Trade Commission and Agency Practice for Other Modes and Industries

The FTC does not impose rules akin to travel credits on any other mode of transportation and neither should the DOT. The DOT relies primarily on its UDP authority for this rulemaking. That authority was modeled on section 5 of Federal Trade Commission Act. While section 5 vests the FTC with broad authority to prohibit unfair or deceptive practices in most industries, Congress granted the Department the exclusive authority to prohibit unfair or deceptive practices of air carriers and foreign air carriers.⁴⁴ In adopting regulations defining unfair and deceptive practices (and guidance interpreting those rules), the DOT relied on the FTC standards and precedent and the DOT's own longstanding informal interpretation of those terms.

However, the FTC and other federal agencies do not impose market-intrusive rules akin to the NPRM's travel credit proposals on any other mode of transportation, nor any other industry, and neither should the DOT. For example, in a notice issued in May 2020, the FTC described refund rules for airlines, cruise ships, rail, and lodging, without any reference to rules mandating credits if the passenger chooses not to travel.

- For cruise lines, the FTC stated “[i]f you booked a cruise, your options will vary by cruise line. Your ticket contract lays out cancellation policies and your rights.” Subsequent to the FTC statement, the Federal Maritime Commission (“FMC”) issued a final rule that requires refunds when a cruise line does not operate, but does not require travel credits when a passenger chooses not to travel.⁴⁵ In addition, the FMC stated in guidance that “[t]he Commission cannot order a cruise line to make a refund to a passenger when a passenger decides not to travel.”⁴⁶

⁴⁴ DOT and FTC share the authority to prohibit unfair or deceptive practices by ticket agents in the sale of air transportation.

⁴⁵ 87 Fed. Reg. 15125.

⁴⁶ See FMC, <https://www.fmc.gov/resources-services/cruise-passenger-assistance/>.

- For rail reservations, the FTC stated “Amtrak is waiving change fees for reservations made before May 31, 2020; you can make changes online at Amtrak.com. For cancellations and refunds, call 1-800-USA-RAIL.” The Amtrak contract of carriage does not provide for travel credits, if the passenger decides not to travel.⁴⁷
- For passenger bus services, the Federal Motor Carrier Safety Administration (“FMCSA”) requires a passenger carrier to set refund policies in its “governing tariff,” but there is no FMCSA regulation requiring travel credits if the passenger chooses not to travel.⁴⁸
- For hotels, the FTC does not require travel credits; rather FTC allows hotel cancellation policies to apply: “Some hotel chains may be loosening their cancellation policies, waiving change and cancellation fees that would normally apply to non-refundable rates. Check with the hotel for your options.”⁴⁹
- For car rentals, the FTC provides advice to consumers on various considerations when renting a car, but omitted any reference to travel credits when the consumer decides to cancel a reservation.⁵⁰

As a consequence, the NPRM singles out air travel as the only federally regulated mode of transportation for which the customer would be entitled to a travel credit, if the passenger opts not to travel, as the table below summarizes.



⁴⁷ See Amtrak, <https://www.amtrak.com/refund-and-cancellation-policy>.

⁴⁸ See 49 C.F.R. § 374.305(d).

⁴⁹ See FTC, <https://consumer.ftc.gov/consumer-alerts/2020/05/covid-19-ruined-my-travel-plans-now-what>.

⁵⁰ See FTC, <https://consumer.ftc.gov/articles/renting-car#Fees>.

The DOT proposal to require non-expiring travel credits is overreaching and should be abandoned because it regulates outside the bounds of FTC and federal agency standards for other travel industries.

F. DOT Lacks Justification to Further Expand the Proposal

The Department asks a series of questions in the NPRM’s preamble. These include whether DOT should further expand the scope of the proposal, such as requiring travel credits for caregivers.⁵¹ The Department should not expand eligibility for travel credits. The NPRM’s scope is already too broad, unclear, and will cause passenger and carrier confusion. Expanding the final rule to include flight credits for caregivers will only exacerbate the potential for mistakes, misunderstandings, and fraud by introducing another undefined and unclear mandate. In addition, the Department cannot expand this proposal to include caregivers because doing so would violate DOT UDP regulations since there is no explanation why it would be “unfair” or “deceptive” to not provide non-expiring travel credits to caregivers. The RIA also fails to include any mention or analysis of the costs and benefits of expanding this proposal to require non-expiring travel credits for caregivers.⁵² The Department must undertake a supplemental notice of proposed rulemaking before proposing to expand the NPRM to such scenarios; however, for the reasons explained here, it should not.

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⁵¹ 87 Fed. Reg. 51,565.

⁵² DOT declined to provide a definition of caregiver in response to a request to extend the comment period. See DOT Answer page 11.

IV. DOT SHOULD ELIMINATE ITS PROPOSAL FOR TRAVEL CREDITS DUE TO CONSUMER’S INABILITY TO TRAVEL BECAUSE SCD-RELATED GOVERNMENT RESTRICTION OR PROHIBITION

A4A opposes travel credits proposed in section 259.5(b)(6)(i)(A) because it incorporates subjective standards that provide less transparency, the proposal is too broad, and in its scope, is unclear and conflicting, and presents an ample opportunity for fraud.

A. Scope is Overly Broad and Impracticable

The scope of this provision is untenable for three reasons: (1) the proposed regulation does not require that the government restriction be explicitly applicable to the passenger; (2) the NPRM uses subjective standards (such as a passenger who is “unable” to travel or where travel would be “meaningless”), and in some cases these standards conflict; and (3) the proposal’s reliance on public health guidance – which can be issued by a range of government entities -- is too expansive.

The proposal does not explicitly require that a government order prevent the passenger from traveling. Instead, the proposal relies on two subjective standards that would allow a passenger to interpret whether a government order impacts their travel. First, the proposal includes the term “restriction,” which implies the passenger may not be banned from traveling, leaving the possibility for partial constraints that allow the passenger discretion to travel. Further, the preamble attempts to broaden the scope of “restriction” by introducing additional terms not in the proposed rule’s text. The preamble states that travel credits are due when a “government order renders the passenger’s travel *meaningless*.” Rendering the purpose of a trip meaningless is not a concept included in the proposed rule’s text; the preamble’s statement therefore indicates a DOT intent to define or otherwise interpret “restriction” in an excessively broad manner. Reliance on an individual passenger’s claims as to the purpose of his/her trip

introduces another subjective standard because only the passenger will know the purpose of his or her trip, or how many purposes there could be for trips with multiple purposes, or whether the rendering of just one of those purposes “meaningless” renders the entire trip meaningless.⁵³

Second, the proposal includes “unable” to travel as a standard, another provision that provides passengers with discretion to determine if they should travel or not. “Unable” generally means not having the capacity, skill, strength, time, knowledge, etc. to do something. This would enable a passenger to use discretion to determine if he or she meets any of these factors.⁵⁴ The combination of these subjective standards would provide the passenger with a tremendous amount of discretion, in reliance on factors that the carrier cannot know or plan for in advance, nor validate. The result would be a requirement for the carrier to insure the passenger’s trip and thereby waste a seat, i.e. perishable inventory, that another passenger could have used. Carriers will need to insure against this eventuality, negatively impacting passengers and undoing the benefits of deregulation. The lack of clarity and reliance on subjective standards in this proposed rule would provide all entities less transparency and cause greater confusion for passengers, carriers, and DOT.

Third, the proposal fails to limit travel to that controlled by carriers—i.e., air travel. In other words, the Department effectively burdens carriers with obligations to provide travel credits when non-air portions of the person’s travel may be prohibited, but the carrier can uphold its end of the bargain.

The proposal’s broad inclusion of many government entities that could issue an order would open a Pandora’s box of scenarios for individual claims and complaints. The potential scope of

⁵³ DOT confirms that it intends to expand the rule text to include the vague concept of a “meaningless” trip in the final rule, which raises Administrative Procedure Act notice and comment concerns, 5 U.S.C. 553. See DOT Answer pages 8-9.

⁵⁴ See Oxford Dictionary, <https://www.oxfordlearnersdictionaries.com/us/definition/english/unable>.

government entities for purposes of the proposed regulation is so broad that a passenger traveling domestically in the U.S. could claim non-expiring travel credits for a government “restriction” on the other side of the world. The following examples demonstrate the fundamental problems with the DOT’s proposal and absurd results requiring the issuance of travel credits:

- A passenger traveling from LAX to JFK could subjectively determine they are unable to travel because their trip would be “meaningless” if a friend, who was supposed to travel from Beijing to JFK was prevented from traveling due to a stay at home order in Beijing. The carrier has no way to know the purpose of a passenger’s trip and no objective standard to apply in response to a request for a travel credit.
- A passenger traveling from LAX to BOS could subjectively determine they are unable to travel because a portion of their trip continues by ground transportation to Canada, but the border is closed between the United States and Canada. The carrier has no way to know, nor can validate, the entirety of the passenger’s travel and no objective standard to apply in response to a request for a travel credit.

Moreover, the non-expiring element of the proposed travel credit requirement is highly problematic and would be impracticable (if not infeasible) to implement. Many carriers’ systems currently do not accommodate non-expiring travel credits, and significant changes to accounting and operational systems would need to be made to recognize and validate credits as they age and technology changes. This would require substantial changes to retention periods and document accessibility. In addition, travel credits also raise administratively burdensome tax, escheat, and property/inheritance law issues where ticket value is proposed to be non-expiring, i.e., kept forever. Currently, there is no technical way in the indirect channels to issue a “Non-expiring” travel credit (using unused tickets). This would require coordination between IATA / GDS / PSS and 3rd party companies to devise a new industry standard to implement this rule, which typically takes 24 months.

B. Minimally Necessary Changes to DOT's Proposal

If DOT adopts this proposal, it should change several provisions to increase transparency and reduce confusion.

- First, DOT should remove the subjective standard of “unable to travel” in proposed section 259.5(a)(6)(i)(A) and replace it with “prohibited to travel by air,” *i.e.*, a travel credit is due if a consumer would violate a U.S. federal or foreign government order by traveling by air. Such an objective standard, relying on a government order as the basis for a passenger’s travel credit request, would provide clarity for passengers and carriers.
- Second, DOT should remove the term “restricted” from the regulatory text in proposed section 259.5(a)(6)(i)(A) and explain in the final rule preamble that a passenger’s own subjective judgment as to whether travel is meaningless is immaterial to a travel credit eligibility determination.
- Third, DOT should explicitly include all the scenarios that would disqualify a passenger for a travel credit so passengers and carriers do not have to wait until DOT makes case-by-case determinations to understand what is eligible for travel credits and what is not. For example, failure to comply with origin or destination public health mandates such as failure to wear a mask, provide a negative test prior to travel, complete pre-travel forms, failure to obtain a visa, or obtain travel insurance, are all circumstances under which, would not entitle a passenger should be ineligible for a travel credit.
- Fourth, travel credits should only be available where the government order directly and substantially impacts the origin or destination of the passenger’s flight, *e.g.*, a passenger ticketed for travel to a city where a mandatory local lockdown prevents guests from leaving their hotel.
- Fifth, the specific terms and conditions of travel credits should not be regulated, but if the final rule addresses the validity period of travel credits, there should be no mandatory minimum expiration date exceeding one year after the original flight. One year would provide passengers a generous amount of time to use travel credits, which could include the ability to potentially book a flight when ready to travel. The final rule could also provide that if a PHE is continuing and the passenger is prevented from traveling during the one-year validity period they would receive an

additional one year from the date of the booked flight. This approach would provide opportunities for a passenger to travel and also to extend travel credits without requiring carriers to bear the cost of maintaining travel credits in perpetuity.

- Sixth, if the final rule regulates travel credits, which it should not, DOT should explicitly state in regulatory text that travel credits are non-transferable to reduce the risk of fraud or abuse.
- Seventh, the Department should let the marketplace determine whether travel credits issued by a carrier can be restricted to rebook only with a carrier. Carriers have different systems and each carrier should decide whether to permit use of travel credits on third-party platforms and DOT can hold carriers accountable on the carrier decision.
- Eighth, the Department should allow carriers to adjust travel credits to account for nonrefundable foreign taxes for international travel rather than requiring the carrier to issue a travel credit equal to the entire amount paid by the customer. Taxes are typically remitted promptly after ticketing, and the carrier is neither in possession of those tax amounts, nor would they be able to seek refunds from the respective taxing authority in most instances. The final rule should allow carriers to exclude nonrefundable taxes from a travel credit to the extent the carrier cannot reclaim the taxes back from the taxing authority, otherwise carriers will end up paying taxes two or more times (which under the proposed rules is an expense the carrier would be required to absorb).

V. PHE-RELATED TRAVEL CREDITS PROPOSAL WILL CAUSE SUBSTANTIAL PASSENGER CONFUSION

We oppose proposed section 259.5(a)(6)(i)(B) because the text includes unclear and vague terms and subjective standards that will cause substantial passenger and carrier confusion. DOT should abandon this proposal because the burdens it will cause will greatly outweigh the benefits, which are extremely limited.

This proposal relies on the general definition of PHE in U.S. Centers for Disease Control and Prevention (“CDC”) regulations by stating “(i) In circumstances when: . . . (B) there is a public health emergency as defined in 42 CFR 70.1....”⁵⁵ The CDC public health emergency definition includes five categories of declarations that are considered PHEs. These include (i) any communicable disease event as determined by the Director of the CDC with potential for regional, national, or international communicable disease spread, (ii) any communicable disease event described in a declaration by the Secretary of Health and Human Services, (iii) any communicable disease event the occurrence of which is notified to the World Health Organization (“WHO”), (iv) any communicable disease event the occurrence of which is determined by the Director-General of the WHO, and (v) any communicable disease event for which the Director-General of the WHO has issued temporary or standing recommendations for purposes of preventing or promptly detecting the occurrence or reoccurrence of the communicable disease.⁵⁶

The United States has declared two public health emergencies related to communicable diseases over the past five years. The WHO has declared 10 public health emergencies, and 113 communicable disease events were notified to the WHO over the past five years. All of these events are listed in Attachment 1 to these comments.⁵⁷

DOT should not adopt the definition of PHE because as proposed it is extremely broad and conflicts with other proposed rule text, thereby providing less transparency and increasing the risk of confusion for passengers and carriers. All of the events listed in Attachment 1 would

⁵⁵ 87 Fed. Reg. 51580.

⁵⁶ 42 C.F.R. § 70.1.

⁵⁷ DOT vastly underestimates the number of events that would be covered citing only the Ebola outbreak for the period of 2014-2016. See DOT Answer page 12.

fit the definition of a PHE under this proposal. However, there is an inherent conflict between events meeting the DOT PHE definition, on the one hand, and rule text that limits the advice or guidance on which a passenger can rely to not travel in order to protect himself or herself from a serious communicable disease, on the other hand. An event in another country should not be used to “protect” a passenger flying domestically. In addition, there will be future U.S. national and regional PHEs, and the public will have no way of knowing whether the PHE qualifies for travel credits under the NPRM’s definition.

This proposal also should not be adopted because it includes a subjective standard and does not require a relationship between a PHE to a particular individual, and such vagueness will provide less transparency and confuse passengers and carriers. While this proposal states that there must be a PHE and a passenger must be advised by a medical professional or determine “consistent with” public health guidance that the passenger should not travel to protect himself or herself from an SCD, the proposal does not state that the PHE must be the same or related to the SCD the passenger seeks to avoid by not traveling by air. Like other parts of this NPRM, not explicitly connecting the PHE to the reason the passenger is not traveling will confuse passengers and carriers as to what, if any, connection there must be to determine travel credit eligibility. In addition, including a subjective standard that a passenger may “determine” consistent with public health guidance not to travel leaves a tremendous information gap for both passengers and carriers as to whether there are any circumstances in which a passenger determination could be challenged or whether such determination could be inconsistent with public health guidance. For example:

- Would a passenger be entitled to a travel credit if a PHE for Ebola were declared in Nigeria and the passenger, who is ticketed for travel from SFO to SEA, does not travel for, fearing of Ebola exposure?

- Assuming the same facts as the example above except the passenger is scheduled to travel from SFO to FRA, would the passenger be entitled to a travel credit if they did not travel because they feared Ebola exposure?
- Would a passenger be entitled to a travel credit if a PHE for Zika virus were declared, but the passenger does not travel for fear of COVID-19?

This section also should not be adopted as proposed because the generic term “medical professional” is used in the regulatory text but a different term, “licensed medical professional,” is used in the NPRM’s preamble.⁵⁸ Moreover, the Department (likely incorrectly) assumes that every medical professional is adequately trained to advise passengers on protection from a serious communicable disease. But, as explained in our request for hearing, less than 10,000 physicians in the United States specialize in infectious disease, while over 19,000 are ophthalmologists, over 48,000 are psychiatrists, over 15,000 are gastroenterologists, over 19,000 are orthopedic surgeons, and over 28,000 specialize in radiology and diagnostic radiology, not to mention the over 200,000 dentists, occupational therapists, and marriage and family therapists. Such vagueness and lack of clarity will cause confusion to passengers and carriers and open the door for fraudsters which should give the Department great concern. Given the Department’s experience in allowing documentation to verify carriage of ESAs and the rampant documentation fraud that resulted, we implore the Department not to adopt this proposal because of the extensive confusion and adverse impact it will have on passengers and carriers.

A. Reasonable Alternative

A reasonable alternative to this proposal, which will provide an option for passengers who have a communicable disease and cannot travel and provide greater clarity and transparency

⁵⁸ DOT acknowledged using the term “medical professional” in some areas of the NPRM and “licensed medical professional” in other areas of the NPRM but declined to clarify why these different terms were used or what standard DOT is proposing. See DOT Answer pages 7-8.

in a final rule is as follows: a passenger may claim travel credits when the following conditions are met (1) there is a National U.S. PHE, (2) tickets were purchased before a PHE is declared, (3) the travel is scheduled to begin during the PHE, and (4) the reason the passenger is not traveling is because of the declared PHE. As noted above, travel credits should last for one year after original flight. Additionally, and for the reasons explained below DOT should significantly enhance documentation that carriers can request to verify eligibility for travel credits.⁵⁹

Enhanced documentation is very important, and as DOT acknowledges in the RIA, “Without allowing for documentation, the proposed rule would effectively require that airlines provide non-expiring vouchers or credits for all passenger-initiated cancellations, regardless of reason. This requirement could result in airlines reconsidering or eliminating the lower priced nonrefundable class of airfare and is beyond the intended scope of the proposed rule.”⁶⁰ We agree with this RIA statement, which, if taken to its logical conclusion, recognizes that less documentation will result in more claims – and a larger volume of credits - with a greater impact on carriers. Conversely, a more robust documentation scheme will reduce the likelihood of travel credits being sought by passengers who are ineligible under the regulation.

B. Minimum documentation allowances

The Department should allow carriers to require the following information from passengers seeking travel credits from the carrier related to travel during a PHE. DOT should create a government form similar to the U.S. DOT Service Animal Air Transportation Form that also includes a warning that it is a federal crime for any person, including but not limited to a passenger or medical professional, to knowingly and willfully make materially false, fictitious,

⁵⁹ Amtrak vouchers expire after one year. See Amtrak, <https://www.amtrak.com/refund-and-cancellation-policy>.

⁶⁰ RIA pages 21 and 22.

or fraudulent statements, entries, or representations on the form in order to secure travel credits (18 U.S.C. § 1001).

This form should require passenger name, date of birth, diagnosis, method of determining diagnosis, test result, name of licensed medical professional, license information, medical professional's location, laboratory, signature, and medical professional's determination when their patient can travel again. In addition, the medical professional's conclusion that the passenger should not travel should be clearly stated on the form, and the statement should be provided by a licensed and practicing MD, DO, NP, PA in the U.S. or equivalent professionals in the passenger's country of origin, treating the passenger for the SCD. The form must be dated after ticket purchase and within 15 days of initial departure because many communicable diseases, if treated properly, can be resolved outside that window.

VI. DOT'S TRAVEL CREDIT PROPOSAL REQUIRING NEITHER A PHE NOR A GOVERNMENT ORDER WILL CREATE PASSENGER CONFUSION

We strongly oppose proposed section 259.5(b)(6)(i)(C)) because it is unclear, includes a subjective standard, will lead to rampant fraud and abuse, and introduces new concepts that are unexplained and will cause confusion and burdens on both passengers and carriers.

The scope of this proposal is much broader than proposed sections 259.5(b)(6)(i)(A) and (b)(6)(i)(B) because it does not require a government order preventing travel or a declared PHE. Instead, this proposal applies during normal times and allows passengers to rely on either advice from a medical professional or guidance from government agencies around the world to determine whether or not to travel. Such an expansive catch-all proposal that relies on the subjective decision of a passenger will cause tremendous confusion and impose significant costs

to carriers that will outweigh any benefits (which will be extremely limited). This proposal should not be adopted in any form.

As noted above, this proposal does not explicitly connect a potential serious communicable disease to a passenger. Rather, the proposal allows a passenger to subjectively determine that they should not travel “consistent with” guidance issued by CDC, comparable foreign government agencies or the WHO. In fact, this proposal does not require that a passenger actually have an SCD, it only requires a subjective determination that (i) a passenger may have an SCD and (ii) his or her condition would pose a direct threat to the health of others.⁶¹ The types of subjective determinations by the passenger include: if they may have an SCD; determining if public health guidance is from a comparable agency to the CDC; determining if the passenger’s condition poses a direct threat to others; and, finally, determining if they should not travel. The lack of certainty and clarity are fatal to the Department’s proposed rules.

First, it is unclear whether the consumer can reasonably determine what constitutes a SCD, which is a new DOT-fabricated standard unsupported by any public health organization standards. In fact, because neither the CDC and other comparable agencies in other countries, nor the WHO make determinations as to whether an illness is a “serious communicable disease,” the Airline Refund NPRM effectively leaves the determination to the consumer, subject only to disagreement from the airline and a final enforcement determination by the Department. Although the Department proposes to define “serious communicable disease,” it does not provide the conditions for making such determination nor instructions on how the consumer may reasonably determine whether a communicable disease defined in 42 C.F.R. § 70.1: (i) has

⁶¹ DOT declined to clarify beyond repeating statements in the NPRM preamble the phrase “may have contracted a serious communicable disease”. See DOT Answer 6.

serious consequences and (ii) can be easily transmitted by casual contact in an aircraft environment.⁶² The significant ambiguity of “serious consequences” is enough to make it unreasonable for the consumer to make this determination. Is the consumer expected to reasonably determine serious consequences in relationship to their own health, the health of others, or public health?

The second condition is similarly plagued by significant ambiguity. What constitutes easily transmissible—transmission from an exposure less than the length of the flight, transmission simply through physical contact with sores, transmission through aerosol exposures with or without masks? What is casual contact—sitting next to another passenger, standing in line during boarding, passing another passenger in the aisle, or physical skin-to-skin contact?⁶³ How should the consumer consider the Harvard T.H. Chan School of Public Health’s *Phase One Report: Gate-to-Gate Travel Onboard Aircraft*, which concludes that implementing layered risk mitigation strategies helps ensure that air travel with respect to COVID-19 “*is as safe as or substantially safer than the routine activities people undertake during these times*”?⁶⁴ Moreover, this determination is predicated on the unsupported assumption that a passenger can reasonably determine in the first instance whether a disease meets the definition of a “communicable disease” under 42 C.F.R. § 70.1. It is unreasonable for the airline to presume that each consumer has the necessary scientific expertise to determine that their illness is a “communicable disease” under 42 C.F.R. § 70.1; therefore, a genuine issue exists as to whether the consumer can make the overall determination that their illness is a serious communicable

⁶² See 87 Fed. Reg. at 51578.

⁶³ DOT declined to define “casual contact” in a request to extend the comment period. See DOT Answer page 10.

⁶⁴ See Harvard T.H. Chan School of Public Health, <https://cdn1.sph.harvard.edu/wp-content/uploads/sites/2443/2020/10/HSPH-APHI-Phase-One-Report.pdf>.

disease. Also, the CDC's own rulemakings demonstrate that scientific or medical understanding and knowledge is needed to determine whether an ill person has a communicable disease.⁶⁵

We also note that the proposed regulation is silent as to who constitutes "others" and that the proposal is overly ambiguous for the consumer to make a reasonable determination of who the "others" may be. Is it other persons onboard the aircraft? Other persons on the entire travel journey? Other persons at the destination, such as the person's family home? Also, it is unclear as to the bases or conditions on which the consumer would determine that their condition poses a "direct threat to the health of others."

As with proposed section 259.5(b)(6)(i)(B), the use of the generic term "medical professional" in the regulatory text for proposed section 259.5(b)(6)(i)(C) is highly problematic, given that it stands in contrast to the term "licensed medical professional" used in the NPRM's preamble. Such vagueness and lack of clarity will cause confusion to passengers and carriers. The concern raised earlier over mistaken or fraudulent documentation that could be used to justify applying for travel credits is even more concerning here, given that this section does not require a PHE to claim travel credits.

Proposed section 259.5(b)(6)(i)(C) relies on the subjective determination of a passenger whether to travel or claim travel credits. There is a significant likelihood that claimants will either (i) misunderstand or wrongly interpret the rule, and mistakenly submit an ineligible claim or (ii) provide bogus or specious claims. The regulatory text in this proposed section states that eligibility includes a passenger who decides not to travel by air because he or she has or may have contracted a SCD as defined in 14 C.F.R. § 260.2, and his or her condition is such that traveling on commercial flights would pose a direct threat to the health of others. The preamble

⁶⁵ See CDC, <https://www.federalregister.gov/documents/2017/01/19/2017-00615/control-of-communicable-diseases>.

states the direct threat analysis requires carriers to consider the significance of the consequences of a communicable disease and the degree to which it can be readily transmitted by casual contact in an aircraft cabin environment. The regulatory text conflicts with the direct threat analysis because the only way a carrier can determine the degree to which a communicable disease can be readily transmitted by casual contact is if the carrier knows that the passenger actually has the communicable disease. It is impossible to know the degree to which a communicable disease can be readily transmitted by casual contact if the passenger *may or may not* have a communicable disease. Therefore, in every case where it is unknown if a passenger has a communicable disease, we would have to conclude that the communicable disease is (1) not serious because the degree of transmissibility is unknown and (2) travel credits are not required because, without knowledge of the consumer's condition, it is unknown whether traveling on commercial flights would pose a direct threat to the health of others.

In addition, it is unclear whether a consumer may make a reasonable determination that they “may have” contracted a serious communicable disease. An important example includes whether passengers can reasonably determine whether they “may have” contracted COVID-19. The CDC’s guidance to help individuals determine the likelihood of COVID-19 infection simply relies on whether the individual was “around a person with COVID-19,” regardless of the non-traveling person’s transmissibility or infectiousness.⁶⁶ However, CDC’s own guidance signals that a person may test positive for COVID-19, but not be transmissible.⁶⁷ In fact, the National Academies of Sciences, Engineering, and Medicine explicitly acknowledges: “The test . . . can return a positive result even after you no longer have an active infection but still have inactive

⁶⁶ See CDC, <https://www.cdc.gov/coronavirus/2019-ncov/your-health/risks-exposure.html>.

⁶⁷ See CDC, <https://www.cdc.gov/coronavirus/2019-ncov/hcp/duration-isolation.html>; CDPH, <https://www.cdph.ca.gov/Programs/CID/DCDC/Pages/COVID-19/Isolation-Quarantine-QA.aspx>.

(dead) pieces of virus in your body.”⁶⁸ Concurrently, the CDC confusingly states that “[i]f you have COVID-19, you can spread the virus to others,”⁶⁹ while also disclaiming:

This application is *not* intended to provide medical advice. Any questions regarding a user’s personal medical condition should be directed to the application user’s primary care physician.⁷⁰

Moreover, the CDC’s guidance does not allow a consumer to determine that they may not have COVID-19 after being around someone with COVID-19—each question simply provides that there is a “lower risk” of infection after being around someone with COVID-19.

The World Health Organization (“WHO”), regardless of whether anyone is known to have COVID-19 and exposed the consumer, states that “*any situation* in which people are in close proximity to one another for long periods of time increases the risk of transmission” of COVID-19 and that the “risk of COVID-19 spreading is especially high” when the following conditions overlap: (i) crowded places; (ii) close-contact settings, especially where people have conversations near each other; and (iii) confined and enclosed spaces with poor ventilation.⁷¹ It continues—“In the context of the COVID-19 pandemic, there is no ‘zero risk’ when it comes to *any kind of gathering* – especially events that bring groups of people together.”⁷² Essentially, nearly any exposure to another person, regardless of whether that other person has COVID-19 or not, introduces the possibility that the consumer may have COVID-19. More remarkably, when taking the WHO’s online COVID-19 transmission quiz and stating that you are “behaving very safely,” but “shake hands” to greet people who don’t live with you results in a preliminary

⁶⁸ See <https://www.nationalacademies.org/based-on-science/can-a-covid-19-test-tell-me-if-im-contagious>.

⁶⁹ See CDC, https://www.cdc.gov/coronavirus/2019-ncov/your-health/isolation.html?CDC_AA_refVal=https%3A%2F%2Fwww.cdc.gov%2Fcoronavirus%2F2019-ncov%2Fif-you-are-sick%2Fquarantine-isolation-background.html.

⁷⁰ See CDC, <https://www.cdc.gov/other/disclaimer.html>.

⁷¹ See WHO, <https://www.who.int/news-room/questions-and-answers/item/coronavirus-disease-covid-19-how-is-it-transmitted>.

⁷² See WHO, <https://www.who.int/emergencies/diseases/novel-coronavirus-2019/question-and-answers-hub/q-a-detail/coronavirus-disease-covid-19-small-public-gatherings>.

“higher risk” determination.⁷³ In sum, the current guidance from public health agencies is inadequate to allow consumers to reasonably determine whether they “may have” COVID-19.

As another example, CDC’s guidance regarding SARS simply explains that “most persons reported as SARS cases in the United States were exposed through foreign travel to countries with outbreaks of SARS,”⁷⁴ but it gives no further guidance as to when or how the individual may reasonably determine that they “may have” SARS upon traveling to countries with a SARS outbreak.⁷⁵ Thus, the consumer can only make one unreasonable conclusion that upon simply visiting a country with a SARS outbreak the consumer “may have” SARS. In sum, considering only these two examples, confusing guidance, even from the CDC, demonstrates that there is a genuine dispute as to the factual and scientific issue of whether consumers may reasonably determine if they may have a serious communicable disease, most especially upon the consumer’s simple reliance on public health organization guidance.

The resulting confusion and bad faith attempts will impose significant burdens on DOT and carrier staff who will be tasked with fielding questions. For passengers who act in good faith but misunderstand the rule, the volume of complaints will be substantial. Given the Department’s experience in allowing documentation to verify previously required carriage of ESAs and the rampant documentation fraud that resulted, we implore the Department not to adopt this proposal because of the likely adverse consequences.

Another conflict created by proposed section 259.5(b)(6)(i)(C) is the concept of a “consumer’s condition,” which as noted above must be known to determine if the passenger’s travel on a commercial flight would pose a direct threat to the health of others. Although

⁷³ See WHO, <https://extranet.who.int/dataformv3/index.php/641777/lang/en/newtest/Y>

⁷⁴ See CDC, <https://www.cdc.gov/sars/travel/advice.html>.

⁷⁵ See CDC, <https://www.cdc.gov/sars/infection/exposure.html> and <https://www.cdc.gov/sars/travel/advice.html#print>.

included in regulatory text, the concept of the “consumer’s condition” is not defined or discussed in the docket, creating more uncertainty about how DOT would enforce this rule. If a passenger believes he or she “may have” an SCD but does not know due to a lack of a positive test result, the consumer’s condition has to also be unknown, in which case the carrier will not know whether the condition would pose a direct threat to the health of others. Given these inherent conflicts, this proposal is arbitrary and capricious, not in accordance with the law and should not be adopted.

Proposed section 259.5(b)(6)(i)(C) is also unclear and will cause confusion because it includes the undefined phrase “comparable agencies in other countries.” The phrase is used in several sections of the regulatory text and throughout the preamble, but it is not defined. Passengers and carriers are unable to determine the full scope of this proposal without understanding the meaning of this phrase.⁷⁶ It is also not clear if a third-party non-governmental entity could be considered a “comparable agency” under the proposed regulation if, for example, a provincial or state government within a foreign country decided to rely on the public health guidance provided by an NGO specializing in communicable diseases.

The likelihood of misunderstanding, wrongly interpreting the rule, mistakenly submitting a claim that is not eligible or providing fraudulent documentation is substantial, especially with regard to this section because of its subjective determinations and unclear and conflicting standards. The risk of misunderstandings and even fraud will exceed the burdens imposed for verifying ESAs because:

- There are no standards in the proposed rule text for medical professional documentation

⁷⁶ While DOT clarified it was not DOT’s intent to include public health authorities in foreign countries at the state/provincial level and local/municipal level, the phrase remains undefined and open to broad interpretation. See DOT Answer page 6.

- There is no requirement for the consumer to have purchased the airline ticket before having an SCD, the passenger could have had the SCD before ticket purchase
- The impact on other passengers of bad actors seeking to game the system by taking advantage of DOT's regulations to hold multiple reservations and occupying inventory knowing that they can obtain non-expiring travel credits will be greatest when demand is highest during holidays and special events
- The preamble also claims without explanation that this section would protect passengers with a vulnerability. Vulnerability, which is not defined or meaningfully discussed in the NPRM, could potentially be interpreted very broadly and, in the process, relied upon to drastically expand the scope of proposed section 259.5(b)(6)(i)(C).

VII. DOT'S PROPOSAL TO TIE TICKET REFUNDS TO RECEIPT OF SIGNIFICANT GOVERNMENT ASSISTANCE IS LEGALLY INDEFENSIBLE

The Department should withdraw proposed section 260.10 because the NPRM fails to provide the underlying statutory justification and analysis under 49 U.S.C. 41712, in violation of DOT's own regulations. Where, as here, the Department conducts a rulemaking based on 49 USC 41712, DOT regulations require the Department to provide the basis for concluding that a practice is unfair or deceptive. DOT regulations state:

Basis for rulemaking. When issuing a proposed or final regulation declaring a practice in air transportation or the sale of air transportation to be unfair or deceptive to consumers under the authority of 49 U.S.C. 41712(a), unless the regulation is specifically required by statute, the Department shall articulate the basis for concluding that the practice is unfair or deceptive to consumers as defined in § 399.79.⁷⁷

Because the Department proposes to declare a carrier's or ticket agent's issuance of travel credits instead of refunds to passengers that cancel travel related to a future PHE or SCD an unfair or deceptive practice if the carrier or ticket agent receives significant government assistance, the Department was required to analyze proposed section 260.10 under 49 U.S.C.

⁷⁷ 14 C.F.R. § 399.75(c).

41712. The NPRM failed to do so. That failure violated 14 CFR 399.75. Accordingly, the proposal must be withdrawn until the Department has conducted the applicable and legally required analysis. If DOT were to move forward with this proposal and adopt it into a final rule, such action would be arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with the law, in contravention of the Administrative Procedure Act.

Even if DOT does not withdraw this provision on the ground that it violates section 399.75, this provision should not be adopted because it attempts to condition appropriated funds, which is Congress' responsibility and exceeds DOT's statutory and regulatory authority.

VIII. THE DOT DOES NOT HAVE THE AUTHORITY TO PRESCRIBE ADDITIONAL CONDITIONS TO LEGISLATIVE APPROPRIATIONS.

Proposed section 260.10 attempts to circumvent basic legal doctrine by requiring that airlines and ticket agents "provide refunds during a future public health emergency, in lieu of travel vouchers or credits, to consumers if the carrier or ticket agent receives "significant government financial assistance."⁷⁸ The NPRM does not define "significant government financial assistance." Rather, "government financial assistance [is] that [which] the Department has determined through a public process to be significant."⁷⁹ DOT states that "significant government financial assistance" is "significant" because the DOT says it is. Such circular reasoning is highly problematic; DOT cannot rely on its conclusion to justify its premise. Moreover, the DOT argues a false construct: it presumes authority over all types of government financial assistance, unlimited by source or agency, including congressional.

⁷⁸ 87 Fed. Reg. 51565.

⁷⁹ 87 Fed. Reg. 51578.

An appropriation is authority to incur obligations and to make payments from the treasury for specified purposes. That is, Congress specifies the manner in which a federal entity is funded, and it makes such funds available for obligation and expenditure. Although an agency may be used as the vessel for the administrative oversight of an appropriation, only Congress may grant an agency budget authority. Accordingly, an agency purporting to affix liability to a regulation on the part of the government is invalid and not binding on the government, because the agency lacks statutory authority. Here, DOT's assertion that it alone can determine what constitutes "significant government financial assistance" is counterintuitive to its inherent statutory limitations. The DOT cannot leverage all sources of aid to effectuate its own rulemaking. Its powers are limited to that which Congress has conferred. Further, DOT cannot exceed the bounds of its authority by relying on the APA's public notice and comment process for statutory grounding. Without the delegation of congressional authority over government financial assistance to airlines, whether implicit or explicit, the DOT cannot dictate that airlines provide refunds in lieu of travel credits on the basis that the airline was the recipient of significant government financial assistance (as defined by DOT).

In the context of recent ("CARES Act") assistance to the airline industry, airlines received significant government assistance during COVID-19 to fund employee payroll without it, workers would have been displaced and with smaller staff some communities would not have air service. Airlines should not be penalized with burdensome additional regulations on their terms of business as a consequence of having accepted assistance, pursuant to formal legal agreements entered into with the U.S. government, including extensive conditions established by statute and under those agreements, that kept thousands of people employed and flights available for the traveling public. DOT's proposal to require cash refunds in lieu of travel credits from

airline recipients of significant government assistance threatens to undermine and frustrate the very purpose of such government initiatives – in particular emergency programs such as those implemented in the early phases of the COVID-19 pandemic, which were intended to (and did) minimize involuntary furloughs.

IX. DOT SHOULD ADOPT THE TICKET AGENT PROPOSAL

We support DOT’s proposal to require that ticket agents provide refunds to passengers because that is standard practice today and there is no reason to change current practice. In addition, if the Department requires travel credits in the final rule, despite our objections, DOT should also require that ticket agents bear responsibility for providing travel credits, valid for use within the ticket agent system, since ticket agents cannot issue travel credits valid for travel on a carrier. All regulated parties (carriers and ticket agents) should be responsible for providing refunds (and travel credits if included in the final rule) to best serve passenger interests in receiving what is due under DOT regulations.

For indirect sales a ticket agent is required to be involved 100% of the time either by 1) requesting a refund on behalf of the consumer if the airline is the merchant of record (“MOR”) or 2) providing the refund if the ticket agent is the MOR. When a ticket agent is a MOR or the consumer has paid cash or check for the flight to the ticket agent, the ticket agent should be responsible for refunding the customer directly. In many cases where the ticket agent is the MOR the airline is not aware of how much the ticket agent charged the passenger and the airline could not issue the correct amount of the refund or credit even if the airline wanted to. In other cases, ticket agents may not have possession of the funds, but they have the customer contact information to provide the refund and the carrier would remit the funds back to the travel agency through the normal credit card or cash remittance process or through a credit memo. The above

description of indirect sales is current practice today and should be codified in DOT rules.

Finally, the final rule should require compliance by ticket agents located outside the U.S. to the extent they sell tickets to travel to/from the U.S., to ensure all parties involved in selling tickets in the U.S. are included and responsible.

X. REGULATORY IMPACT ANALYSIS COMMENTS

The DOT designated this NPRM as “Other Significant,” which is defined as “a rulemaking that is not economically significant but is considered significant by the agency according to Section 3(f) of EO 12866. This category includes rules that the agency anticipates will be reviewed under EO 12866 or rules that are a priority of the agency head.”⁸⁰ The RIA attempted to analyze the costs and benefits of the NPRM by differentiating impacts when a future public health emergency is declared and when there is no public health emergency but passengers decide not to travel because of a serious communicable disease. However, due to a lack of data, the RIA was unable to quantitatively identify the costs or benefits of the NPRM.⁸¹ DOT asked for comments on the RIA and for any additional information that would assist with a cost/benefit analysis.

A4A engaged InterVISTAS to conduct an analysis of the costs of the NPRM to assist the DOT in its assessment of the NPRM. We asked InterVISTAS to estimate the potential costs of DOT proposals to require (1) flight credits during a PHE, (2) flight credits when no PHE is declared, and (3) refunds when a carrier receives significant financial assistance in a future PHE. The InterVISTAS analysis concludes that this rule should be designated as “economically significant” because it is likely to have an annual effect on the economy of \$100 million or more

⁸⁰ Regulatory Information Service Center 87 Fed. Reg. 48238.

⁸¹ RIA page ii.

and adversely affect in a material way, a sector of the economy, and productivity. We question how the government can designate a rulemaking as not economically significant when the RIA is unable to quantitatively determine the costs and benefits of the NPRM. DOT and OIRA should reduce the burdens of this proposal by eliminating all three non-expiring flight credit proposals and refunds for carriers receiving significant financial assistance in future PHEs.

A. Costs During a PHE

DOT proposes that non-expiring flight credits be issued to passengers who decline to travel during a PHE . This requirement could have significant impacts, in part because this rule would apply not only to PHEs that occur within the United States, but also to PHEs occurring around the world when the passenger’s Origin-to-Destination (“O&D”) journey involves the United States. A significant number of PHEs occur every year around the world. Over a representative pre-COVID twelve-month period between February 2018 and January 2019, there were twenty-three PHEs declared by the World Health Organization (“WHO”) as shown in Table 1 below, affecting some of the largest international air travel markets to/from the United States such as the UK/Ireland, France, China, and Japan.

Table 1: WHO Public Health Emergencies declared between February 2018-January 2019

Affected Country/Countries	WHO PHE Declaration Year/Month	PHE
UK/Ireland	Jan-19	Gonococcal Infection
Argentina	Jan-19	Hantavirus Pulmonary
Congo	Jan-19	Poliomyelitis
Panama	Jan-19	Hantavirus Disease
Pakistan	Dec-18	Typhoid Fever
The Netherlands	Dec-18	Yellow Fever
Sudan	Oct-18	Chikungunya Fever
Niger/Zimbabwe/Algeria	Oct-18	Cholera
China	Sep-18	Avian Influenza (H7N9)

France	Aug-18	Yellow Fever
Nigeria	Aug-18	Poliovirus Type 2
India	Aug-18	Nipah Virus
Japan	Jun-18	Measles
Cameroon	Jun-18	Cholera
Brazil	Jun-18	Measles
Somalia	May-18	Poliovirus Type 2
France	May-18	Dengue
Nigeria	Apr-18	Lassa Fever
Somalia	Mar-18	Cholera
South Africa	Mar-18	Listeriosis
The Netherlands	Mar-18	Influenza (H1N2)
Gambia	Feb-18	Rift Valley Fever
Mozambique	Feb-18	Cholera

Each of these incidents were declared PHEs, but none of them resulted in a generalized shutdown on the scale of COVID or Ebola. If there were generalized fear and/or risk of transmission to the traveling public, we anticipate demand would decline substantially after a PHE was declared. By measuring the change in year-over-year passenger volume before and after the declaration of the PHE (year-over-year period-over-period or “YoY PoP” change), we can then assess whether the PHE materially impacted demand to or from the United States, independent of seasonality or other recurrent grounds for demand variation. In fact, based on SABRE global demand data, the 3-month before/after YoY PoP demand was flat to positive in 14 of the 23 PHEs above, and in only 4 cases did the YoY PoP passenger decline exceed 15%. We conclude that there is not strong evidence to support the view that PHEs of the severity seen on a recurrent basis strongly discourage passenger demand. Thus, the actual public need for the proposed DOT action is questionable.

However, in mandating a set of changeability and flight credit rules when a PHE is active, DOT’s proposal does introduce a new risk of gaming behavior which would result in increased costs to airlines. Passengers who purchased Basic Economy type fare products

(nonrefundable/non-changeable or changeable with a fee) who desire to change or postpone their trip for reasons completely unrelated to real or perceived health risks in travel to/from a region with an active PHE may now postpone or cancel their trip and receive flight credits, simply because of the existence of a PHE. We estimate the cost of this gaming behavior under three scenarios, assuming that 5% (low impact scenario), 10% (mid impact scenario), or 25% (high impact scenario) of passengers in affected markets avail themselves of a flight credit instead of traveling, InterVISTAS estimates the anticipated costs to U.S. carriers for each quarter during which the PHE is active to be approximately \$29 million per quarter in a low impact scenario, approximately \$58 million in a midpoint scenario, and approximately \$146 million per quarter in foregone future revenue in a high impact scenario (see Table 2). If the PHEs were active and impacting demand for an entire year, these impacts would be approximately quadrupled.

Table 2: Global PHE Flight Credit Cost and Cost Recovery Impacts⁸²

Scenario	Flight Credit Take Rate	Flight Credit Carrier Cost per quarter \$M	Fare Increase for Cost Recovery	Pax Decline per quarter, 000
Low	5%	(\$29)	+0.7%	(34)
Medium	10%	(\$58)	+1.4%	(69)
High	25%	(\$146)	+3.4%	(172)

Airlines may seek to recover the cost of issuing flight credits through fare increases.

Table 2 shows that fare increases between 0.7% and 3.4% would be required to recover the cost of the issued flight credits, resulting in a decline of between 34,000 and 172,000 passengers per

⁸² Total market demand travelling on U.S. airlines between the U.S. and the PHE affected country for each of the 23 PHE cases was derived from a demand database, evaluated at the maximum of the three travel months after WHO's declaration of a PHE in the current year versus prior year. Only passengers purchasing Basic Economy fare products were included, since passengers purchasing Main Cabin fare products (nonrefundable / changeable without a fee) or Refundable Coach products may today already cancel a reservation and receive a flight credit for any reason without a fee.

quarter after elasticity impacts.⁸³ In addition, depending on the frequency and severity of PHEs affecting a specific nation or region, airlines penalized by this rule may be less likely in future to serve regions with elevated rates of PHE occurrence. Thus, DOT's regulation may have the unintended effect of delaying the return of air service after a PHE, which would be harmful to developing economies of the world affected by PHEs.

The harmful effects of this rule may be most directly felt in the United States, because PHEs are also common within the United States. Over the last three months, the Secretary of the Department of Health and Human Services has issued renewals of national public health emergencies for the following:

- Renewal of determination that a national PHE exists due to Monkeypox (renewed November 2, 2022, active since August 2, 2022)
- Renewal of determination that a national PHE exists due to the COVID-19 Pandemic (renewed October 13, 2022, active since January 31, 2020)
- Renewal of determination that a national PHE exists due to the Opioid Crisis (renewed September 29, 2022, active since October 26, 2017)

If any passenger travelling on a Basic Economy ticket may secure a non-expiring flight credit simply by noting the existence of a national PHE – of which there are currently three active within the United States, and at least one active for the past five years – then effectively, the Department will eliminate airlines' ability to create fare products with non-changeability rules, such as Basic Economy fare products. This will create significant economic risk to carriers from passengers evading fare rules and trading down from Main Economy and other fare products to Basic Economy, and indeed puts the survivability of Basic Economy fares at risk. These risks are evaluated further in the next section.

⁸³ Price elasticities of demand based on InterVISTAS elasticity studies were assumed as follows: -0.85 for travel within North America, -0.80 for travel to/from Latin America, -0.96 for travel to/from Europe, and -0.48 for travel to/from Asia.

B. Costs When No PHE is Declared

The Department proposes that airlines issue flight vouchers to passengers who are unable to travel based on the advice of a medical professional or based on guidance, because the passenger has or may have a SCD.

The cost and impact of this rule on the airline industry is likely substantial. There is ample financial incentive and scope under the proposed regulation for passengers to seek to evade airline fare structure rules, alter their ticket purchasing behavior, and thereby cause substantially higher airline revenue losses. This could result in significant disruption of the current U.S. carrier fare structures, and potentially threaten Basic Economy as a sustainable fare product.

Today, several major carriers offer a Basic Economy product which appeals to price conscious consumers who are certain they will travel on the flights and dates they originally select. The Basic Economy fare product is the least expensive option offered by these carriers. The attractive price points of Basic Economy enable price sensitive passengers to enjoy the speed and convenience of air transportation. In exchange, Basic Economy contains restrictions which may include the lack of advance seat assignment, reduced or no frequent flyer credit, etc.; each carrier has its own set of Basic Economy characteristics. Critically, Basic Economy fares are not refundable, and depending on the carrier are either not changeable or are changeable with a high fee. As a result, less price sensitive customers prefer the flexibility of a Main Coach fare product -- which is nonrefundable but changeable without a fee (flight credit vouchers are issued when requested). This fare structure allows airlines to offer fare options that are uniquely tailored to suit each customer group's needs and preferences.

DOT's proposed rule would result in serious disruption to each carrier's carefully tailored fare structures because the NPRM proposes that flight credits be issued without cost to Basic Economy customers, who are today ineligible for flight credits. A Basic Economy customer need only assert to be "unable" to travel to be able to claim a flight credit for the value of their trip. This creates two substantial revenue risks to carriers:

- **Basic Economy Flight Credits:** After the DOT rule, any Basic Economy passenger needing to make a flight itinerary change may evade the fee rule that prevents or charges for flight changes. The financial incentive for customers to evade is significant, ranging from \$99 (the lowest change cost among A4A carriers that permit changes to Basic Economy tickets) to the full value of the Basic Economy ticket (for those carriers who do not permit changes). Given this financial incentive, we can reasonably expect that awareness of the DOT rule will be high, with "how-to" guides publicized on social media and the internet to facilitate passengers securing the required medical advice or guidance to not travel, should the need arise.
- **Fare Trade-down:** Some customers purchasing Main Coach today because of its change flexibility will in future trade-down to Basic Economy, secure in the knowledge that if the need arises, they may change their ticket for free by asserting an inability to travel. There is significant financial incentive for customers to evade the Main Coach fare – we estimate Basic Economy fares may be 25% or more cheaper than Main Coach fares, on average. The moral hazard for Main Coach customers is heightened because only a minority of Main Coach customers ultimately need to change or cancel their itineraries – so most of the time, Main Coach trade-down to Basic Economy achieves a simple cash savings. Again, we can reasonably expect that awareness of the DOT rule and the trade-down incentive will be high, and broadly publicized on the internet, social media, and within the travel agency community.

InterVISTAS estimated the cost of these two revenue risks based on data by coach cabin product under a variety of trade-down likelihoods. These are summarized in Table 3. Basic Economy Flight credits are likely to cost airlines \$0.4 billion/annually under the reasonable assumptions that Basic Economy passengers need to change their itineraries as frequently as Main Cabin customers, and that only 15% of these passengers seek a flight credit. Trade-down

will cost airlines \$0.6 billion/annually under the Low scenario in which only 5% of Main Cabin customers trade-down to Basic Economy, and up to \$1.5 billion/annually in the High scenario if 20% of Main Cabin customers trade-down. The total annual cost to A4A carriers of Basic Economy flight credits and trade-downs therefore ranges from \$0.9 billion under the low scenario estimate to as high as \$1.9 billion. The high magnitude of these impacts is driven by the unintended creation of a financial incentive to trade-down (or request a flight credit) – which occurs for nearly all domestic and international coach passengers traveling on an airline that offers Basic Economy.

Table 3: A4A member annual cost from Basic Economy flight credits and trade-downs

Scenario	Flight Credit Cost \$M	Trade-Down Revenue Loss \$M ⁸⁴	Total Annual Cost \$M
Low	\$0.4B	\$0.6B	\$0.9B
Medium		\$1.0B	\$1.3B
High		\$1.5B	\$1.9B

Faced with this degree of increased costs due to the DOT regulation, it is reasonable that an affected airline may seek to recover the cost increase through higher fares. If each affected airline sought this recovery and the fare increases were successful in the marketplace, Table 4 shows that the fare increases would drive a decline of between 1.1% to up to 2.1% of affected U.S. airline coach passengers, based on reasonable estimates of passenger fare elasticity by region.⁸⁵ This would result in between 4.4 million (low scenario) to up to 8.9 million fewer domestic customers travelling per year. Additional economic impacts (lost employment, jobs, and GDP) including multiplier effects from reduced air travel are not included in this analysis.

⁸⁴ Assumes passengers trade down to Basic Economy at the average fare difference between their current fare product and Basic Economy. Because trade-down would likely cause a significant demand increase for the inventory-controlled Basic Economy product, we assume only a portion of the trade-down attempts will actually be accommodated. This assumed inventory availability success rate declines as trade-down rate increases, from 55% (Low), to 45% (Medium), to 35% (High).

⁸⁵ InterVISTAS fare elasticity estimates were used with adjustments for Basic Economy passengers (assumed to be 25% more price elastic than the market average) and Refundable Coach passengers (assumed to be 25% less price elastic).

Table 4: Fare increases and pax declines in response to Basic Economy flight credits and trade-downs, for affected A4A airlines

Scenario	North America – all Coach Fares % Increase	% Pax Decline	Annual Passenger Decline, Millions
Low	+1.2%	-1.1%	-4.4M
Medium	+1.8%	-1.5%	-6.3M
High	+2.5%	-2.1%	-8.9M

If affected carriers do not recover their cost increases through fare increases, the sustainability of Basic Economy as a fare product may be at risk. Affected airlines may not achieve recovery through higher fares. In this case, affected carriers would then need to trade off the \$0.9 billion to \$1.9 billion additional costs incurred with Basic Economy due to the DOT regulation, compared to the total revenue and competitive gains from offering this fare product in the first place. Some carriers might reasonably conclude to cease offering Basic Economy entirely.

Table 5 summarizes the key impacts to passengers if all U.S. airlines currently offering Basic Economy ceased offering the product in response to the increased costs imposed by DOT regulation, and passengers were left with Main Cabin fares being the lowest fare option in the marketplace. InterVISTAS estimates approximately 25.5M fewer price sensitive customers would travel by air, because they would be unwilling to pay higher Main Cabin fares. In addition, assuming the affected airlines sought to recover the costs of this regulation through higher fares, a revenue increase of 2.5% from the remaining Main Cabin and Refundable Coach products would be required through higher fares. If successful, this would result in a decline of 7.2M passengers annually (mostly Main Cabin) due to fare elasticity tradeoffs, resulting in a total of 32.7M fewer total annual passengers travelling by air with the elimination of Basic Economy.

Table 5: Key Passenger Impacts if Basic Economy is Eliminated

Lost Basic Economy Passengers (do not trade-up to Main Cabin)	Main Cabin Rev Increase Required for Revenue Neutrality	Lost Main Cabin Passengers	Total Annual Passenger Decline, Millions
-25.5M	+2.5%	-7.2M	-32.7M

C. Costs of Refunds When There is Future Significant Financial Assistance

The Department proposes that U.S. airlines would be required to provide refunds to passengers in a future PHE if airlines receive substantial financial assistance. While each PHE impacts travel demand uniquely, data from the recent COVID-19 PHE may be used to illustrate the potential refund exposure of this regulation for airlines, as applied to a large-scale PHE that causes a near shutdown of air transportation.

InterVISTAS utilized Airlines Reporting Corporation (ARC) data on all tickets sold to, from, or within the United States for travel in the 12-month period immediately during and following the COVID shutdowns for A4A member carriers, regardless of bookings date.⁸⁶ Finally, all exchanges and refunds of tickets which occurred after COVID began were tabulated.

Table 6 summarizes key results. For the highest COVID impact travel period between March 10, 2020 through February 28, 2021, passengers on A4A carriers purchased approximately 379 million tickets with a revenue value of \$43,522 million. These amounts lag far behind tickets issued during a non-COVID travel year, since airlines globally dramatically reduced schedules for the rest of the 2020 travel year following the outbreak of COVID. During this same COVID travel period, exchanges of tickets (possibly to another flight but usually to a

⁸⁶ Since some carriers do not report direct-to-carrier distribution channel data to ARC, a correction to revenue and passenger underreporting for these carriers was made to the data. Further, ARC international data was adjusted to remove international carriers from the reporting.

flight credit certificate) or refunds were issued to 180 million passengers with a dollar value of \$18.2B.

**Table 6: A4A Carrier Estimated COVID Travel Period (3/10/20-2/28/21)
Issuance/Refunds/Exchanges**

Region	Issued Pax (M)	Issued Rev (\$M)	Exchanged/Refunded Pax (M)	Exchanged/Refunded Rev (\$M)	% Pax	% Rev
Domestic	349	\$35,687	161	\$13,783	46.2%	38.6%
International	31	\$7,835	18	\$4,385	59.3%	56.0%
Total	379	\$43,522	180	\$18,168	47.3%	41.7%

InterVISTAS review of these three areas of the NPRM provide data where currently none exists in the RIA. The results of this review indicate the proposal is “economically significant,” the costs outweigh benefits, and DOT should remove all three flight credit proposals.

XI. CONCLUSION

For the reasons stated herein, we respectfully request that DOT (a) adopt definitions of cancellation and SCFI with A4A recommendations, (b) withdraw all three non-expiring travel credit proposals and the proposed requirement that recipients of significant financial assistance provide cash refunds in lieu of travel credits, (c) adopt the ticket agent proposal, and (d) if DOT decides a flight credit rule for travel during a PHE is necessary, adopt the A4A alternative.

Public Health Emergencies United States, WHO, Reported to WHO 2017-2022

List of HHS Public Health Emergencies 2017-2022

<https://aspr.hhs.gov/legal/PHE/Pages/default.aspx>

	Emergency	Link	Region	Date
1.	Monkeypox	Determination that a Public Health Emergency Exists Nationwide as the Result of the Consequences of Monkeypox	National	August 2, 2022
2.	COVID-19	Renewal of the Determination that a Public Health Emergency Exists Nationwide as the Result of the Continued Consequences of Coronavirus Disease 2019 (COVID-19) Pandemic	National	July 15, 2022

List of WHO Public Health Emergencies of International Concern 2017-2022

WHO Declared PHEIC - <https://www.who.int/emergencies/situations>

	Emergency	Link	Date
	Monkeypox	https://www.who.int/europe/news/item/23-07-2022-who-director-general-declares-the-ongoing-monkeypox-outbreak-a-public-health-event-of-international-concern	July 2022-Present
	Ebola (Democratic Republic of the Congo)	https://www.who.int/emergencies/situations/ebola-%C3%A9quateur-province-democratic-republic-of-the-congo-2022	July 2022-Present
	Ebola (Democratic Republic of the Congo)	https://www.who.int/emergencies/situations/ebola-2021-north-kivu	February 2021-May 2021

COVID-19	https://www.who.int/emergencies/diseases/novel-coronavirus-2019	January 2020-Present
Ebola (Democratic Republic of the Congo)	https://www.who.int/emergencies/situations/ebola-health-update---%C3%A9quateur-province-democratic-republic-of-the-congo-2020	June 2020-November 2020
Ebola	https://www.who.int/emergencies/situations/ebola-outbreak-2014-2016-West-Africa https://www.who.int/emergencies/situations/Ebola-2019-drc	2014-2016 and 2019-2020
Ebola (Democratic Republic of the Congo)	https://www.who.int/emergencies/situations/ebola-outbreak-2017---drc	May 2017-July 2017
Polio	https://www.who.int/news/item/24-06-2022-statement-of-the-thirty-second-polio-ihr-emergency-committee#:~:text=Conclusion,for%20a%20further%20three%20months .	2014-Present

List of Events that are Always Notifiable under IHS -

<https://www.cdc.gov/globalhealth/healthprotection/ghs/ihr/index.html>

These diseases are required to be reported under IHR, no matter when or where they occur:

- Smallpox
- Poliomyelitis
- Human Influenza Caused by a New Subtype
- Severe Acute Respiratory Syndrome (SARS)

List of Events Potentially Notifiable under IHS -

<https://www.cdc.gov/globalhealth/healthprotection/ghs/ihr/index.html>

These diseases are only notifiable when they represent an unusual risk or situation:

- Cholera
- Pneumonic Plague
- Yellow Fever
- Viral Hemorrhagic Fever
- West Nile Fever

List of Public Health Emergencies Reported to WHO -

<https://www.who.int/emergencies/disease-outbreak-news/2>

Total (Beginning September 2017): 113

- Excludes many outbreaks of Ebola in the Congo and multiple reports of COVID-19
- Includes new reports of a disease. If a new report came out at a similar time for more than one country, they were counted as one report.

	Emergency	Link	Date
1.	Polio – UK/Ireland/US	https://www.who.int/emergencies/disease-outbreak-news/item/2022-DON408	September 2022
2.	Legionellosis – Argentina	https://www.who.int/emergencies/disease-outbreak-news/item/2022-DON407	September 2022
3.	Yellow Fever – East, West, and Central Africa	https://www.who.int/emergencies/disease-outbreak-news/item/2022-DON405	September 2022
4.	Ebola – Democratic Republic of the Congo	https://www.who.int/emergencies/disease-outbreak-news/item/2022-DON404	August 2022
5.	Leptospirosis - Tanzania	https://www.who.int/emergencies/disease-outbreak-news/item/2022-DON403	August 2022
6.	Marburg Virus - Ghana	https://www.who.int/emergencies/disease-outbreak-news/item/2022-DON402	July 2022
7.	Cholera - Somalia	https://www.who.int/emergencies/disease-outbreak-news/item/2022-DON398_1	July 2022
8.	Hepatitis of Unknown Etiology	https://www.who.int/emergencies/disease-outbreak-news/item/2022-DON400	July 2022
9.	Polio - Mozambique	https://www.who.int/emergencies/disease-outbreak-news/item/2022-DON395	June 2022
10.	Cholera - Pakistan	https://www.who.int/emergencies/disease-outbreak-news/item/2022-DON391	June 2022
11.	Crimean-Congo Hemorrhagic Fever - Iraq	https://www.who.int/emergencies/disease-outbreak-news/item/2022-DON386	June 2022
12.	Dengue – Sao Tome and Principe	https://www.who.int/emergencies/disease-outbreak-news/item/2022-DON387	May 2022
13.	Influenza A (H1N1) - Germany	https://www.who.int/emergencies/disease-outbreak-news/item/2022-DON384	May 2022
14.	Middle East Respiratory Syndrome - Oman	https://www.who.int/emergencies/disease-outbreak-news/item/2022-DON380	May 2022
15.	Cholera - Cameroon	https://www.who.int/emergencies/disease-outbreak-news/item/2022-DON374	May 2022
16.	Lassa Fever - Guinea	https://www.who.int/emergencies/disease-outbreak-news/item/2022-DON382	May 2022
17.	Middle East Respiratory Syndrome - Qatar	https://www.who.int/emergencies/disease-outbreak-news/item/2022-DON370	May 2022
18.	Avian Influenza (H3N8) - China	https://www.who.int/emergencies/disease-outbreak-news/item/2022-DON378	May 2022

19.	Avian Influenza A (H5N1)	https://www.who.int/emergencies/disease-outbreak-news/item/2022-E000111	May 2022
20.	Japanese Encephalitis - Australia	https://www.who.int/emergencies/disease-outbreak-news/item/2022-DON365	April 2022
21.	Measles - Somalia	https://www.who.int/emergencies/disease-outbreak-news/item/2022-DON371	April 2022
22.	Cholera - Malawi	https://www.who.int/emergencies/disease-outbreak-news/item/2022-DON372	April 2022
23.	Yellow Fever - Uganda	https://www.who.int/emergencies/disease-outbreak-news/item/2022-DON367	April 2022
24.	Yellow Fever - Kenya	https://www.who.int/emergencies/disease-outbreak-news/item/2022-DON361	March 2022
25.	Shingella Sonnei Infections – European Region	https://www.who.int/emergencies/disease-outbreak-news/item/2022-DON364	March 2022
26.	Lassa Fever - Togo	https://www.who.int/emergencies/disease-outbreak-news/item/2022-DON362	March 2022
27.	Wild Polio Virus Type 1 (WPV1) - Malawi	https://www.who.int/emergencies/disease-outbreak-news/item/wild-poliovirus-type-1-(WPV1)-malawi	March 2022
28.	Measles - Afghanistan	https://www.who.int/emergencies/disease-outbreak-news/item/measles-afghanistan	February 2022
29.	Dengue – Timor-Leste	https://www.who.int/emergencies/disease-outbreak-news/item/dengue---timor-leste	February 2022
30.	Cholera - Benin	https://www.who.int/emergencies/disease-outbreak-news/item/cholera-benin	January 2022
31.	Influenza A (H5) – UK and Ireland	https://www.who.int/emergencies/disease-outbreak-news/item/influenza-a-(h5)---united-kingdom-of-great-britain-and-northern-ireland	January 2022
32.	Hepatitis E - Sudan	https://www.who.int/emergencies/disease-outbreak-news/item/hepatitis-e-virus-republic-of-south-sudan	December 2021
33.	Dengue - Pakistan	https://www.who.int/emergencies/disease-outbreak-news/item/dengue-fever-pakistan	December 2021
34.	Yellow Fever – Ghana	https://www.who.int/emergencies/disease-outbreak-news/item/yellow-fever---ghana	December 2021
35.	Monkeypox	https://www.who.int/emergencies/disease-outbreak-news/item/2021-DON344	November 2021
36.	Yellow Fever - Venezuela	https://www.who.int/emergencies/disease-outbreak-news/item/yellow-fever---bolivarian-republic-of-venezuela	October 2021

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37.	Plague - Madagascar	https://www.who.int/emergencies/disease-outbreak-news/item/plague---madagascar	October 2021
38.	Nipah Virus Disease - India	https://www.who.int/emergencies/disease-outbreak-news/item/nipah-virus-disease---india	September 2021
39.	Meningitis – Democratic Republic of the Congo	https://www.who.int/emergencies/disease-outbreak-news/item/2021-DON334	September 2021
40.	Marburg Virus Disease - Guinea	https://www.who.int/emergencies/disease-outbreak-news/item/marburg-virus-disease--guinea	September 2021
41.	Avian Influenza (H5N1) - India	https://www.who.int/emergencies/disease-outbreak-news/item/human-infection-with-avian-influenza-a(h5n1)-%EF%BD%B0-india	August 2021
42.	Monkeypox – US/UK/Ireland	https://www.who.int/emergencies/disease-outbreak-news/item/monkeypox---the-united-states-of-america	July 2021
43.	Ebola - Guinea	https://www.who.int/emergencies/disease-outbreak-news/item/2021-DON328	June 2021
44.	Avian Influenza (H10N3) - China	https://www.who.int/emergencies/disease-outbreak-news/item/human-infection-with-avian-influenza-a(h10n3)-china	June 2021
45.	Avian Influenza A (H5N8) - Russia	https://www.who.int/emergencies/disease-outbreak-news/item/2021-DON313	February 2021
46.	Rift Valley Fever - Kenya	https://www.who.int/emergencies/disease-outbreak-news/item/2021-DON311	February 2021
47.	Influenza A (H3N2)	https://www.who.int/emergencies/disease-outbreak-news/item/2021-DON309	February 2021
48.	Cholera - Togo	https://www.who.int/emergencies/disease-outbreak-news/item/cholera-togo	January 2021
49.	Influenza (H1N2) - Brazil	https://www.who.int/emergencies/disease-outbreak-news/item/2021-DON306	January 2021
50.	Yellow Fever – Sengal/Guinea	https://www.who.int/emergencies/disease-outbreak-news/item/2020-DON302	December 2020
51.	Acute Hepatitis E – Burkina Faso	https://www.who.int/emergencies/disease-outbreak-news/item/2020-DON300	November 2020
52.	Avian Influenza (H5N1) - Lao	https://www.who.int/emergencies/disease-outbreak-news/item/avian-influenza-a(h5n1)--lao-people-s-democratic-republic	November 2020
53.	Rift Valley Fever - Mauritania	https://www.who.int/emergencies/disease-outbreak-news/item/rift-valley-fever-mauritania	November 2020

54.	Mayaro Virus – French Guiana	https://www.who.int/emergencies/disease-outbreak-news/item/mayaro-virus-disease---french-guiana-france	October 2020
55.	Oropouche Virus – French Guiana	https://www.who.int/emergencies/disease-outbreak-news/item/oropouche-virus-disease---french-guiana-france	October 2020
56.	Plague - Congo	https://www.who.int/emergencies/disease-outbreak-news/item/plague-democratic-republic-of-the-congo	July 2020
57.	Influenza A (H1N1) - Brazil	https://www.who.int/emergencies/disease-outbreak-news/item/2020-DON286	July 2020
58.	Dracunculiasis – African Reion	https://www.who.int/emergencies/disease-outbreak-news/item/2020-DON273	May 2020
59.	Measles - Burundi	https://www.who.int/emergencies/disease-outbreak-news/item/2020-DON264	May 2020
60.	Measles - Mexico	https://www.who.int/emergencies/disease-outbreak-news/item/2020-DON267	April 2020
61.	Dengue - France	https://www.who.int/emergencies/disease-outbreak-news/item/2020-DON265	April 2020
62.	Yellow Fever - Ethiopia/South Sudan	https://www.who.int/emergencies/disease-outbreak-news/item/2020-DON263	April 2020
63.	Dengue – Region of the Americas	https://www.who.int/emergencies/disease-outbreak-news/item/2020-DON251	March 2020
64.	Measles – Central African Republic	https://www.who.int/emergencies/disease-outbreak-news/item/2020-DON246	March 2020
65.	Dengue - Chile	https://www.who.int/emergencies/disease-outbreak-news/item/2020-DON250	February 2020
66.	Lassa Fever - Nigeria	https://www.who.int/emergencies/disease-outbreak-news/item/2020-DON245	February 2020
67.	COVID - Worldwide		December 2019 – February 2020
68.	Dengue - Afghanistan	https://www.who.int/emergencies/disease-outbreak-news/item/2019-DON218	December 2019
69.	Dengue - Spain	https://www.who.int/emergencies/disease-outbreak-news/item/2019-DON214	November 2019
70.	Lassa Fever – The Netherlands	https://www.who.int/emergencies/disease-outbreak-news/item/2019-DON213	November 2019
71.	Dengue - Sudan	https://www.who.int/emergencies/disease-outbreak-news/item/2019-DON207	November 2019
72.	Rift Valley Fever - Sudan	https://www.who.int/emergencies/disease-outbreak-news/item/2019-DON205	November 2019

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73.	Zika - France	https://www.who.int/emergencies/disease-outbreak-news/item/2019-DON203	October 2019
74.	Measles - Lebanon	https://www.who.int/emergencies/disease-outbreak-news/item/2019-DON195	October 2019
75.	Cholera - Sudan	https://www.who.int/emergencies/disease-outbreak-news/item/2019-DON192	October 2019
76.	Yellow Fever - Nigeria	https://www.who.int/emergencies/disease-outbreak-news/item/2019-DON189	September 2019
77.	Polio - Philippines	https://www.who.int/emergencies/disease-outbreak-news/item/2019-DON190	September 2019
78.	Undiagnosed Febrile Illness - Tanzania	https://www.who.int/emergencies/disease-outbreak-news/item/2019-DON188	September 2019
79.	Listeriosis - Spain	https://www.who.int/emergencies/disease-outbreak-news/item/2019-DON256	September 2019
80.	HIV - Pakistan	https://www.who.int/emergencies/disease-outbreak-news/item/2019-DON163	July 2019
81.	Polio Type 1 - Iran	https://www.who.int/emergencies/disease-outbreak-news/item/24-may-2019-wild-polio-virus-islamic-republic-of-iran-en	May 2019
82.	Monkeypox - Singapore	https://www.who.int/emergencies/disease-outbreak-news/item/16-may-2019-monkeypox-singapore-en	May 2019
83.	Measles – Tunisia/Ukraine/Western Pacific Region	https://www.who.int/emergencies/disease-outbreak-news/item/2019-DON150	May 2019
84.	Rift Valley Fever - France	https://www.who.int/emergencies/disease-outbreak-news/item/13-may-2019-rift-valley-fever-mayotte-france-en	May 2019
85.	Chikungunya - Congo	https://www.who.int/emergencies/disease-outbreak-news/item/01-may-2019-chikungunya-congo-en	May 2019
86.	Yellow Fever - Brazil	https://www.who.int/emergencies/disease-outbreak-news/item/18-april-2019-yellow-fever-brazil-en	April 2019
87.	Carbapenem-Resistant Pseudomonas Aeruginosa Infection - Mexico	https://www.who.int/emergencies/disease-outbreak-news/item/5-march-2019-carbapenem-resistant-p-aeruginosa-mex-en	March 2019
88.	Lassa Fever - Nigeria	https://www.who.int/emergencies/disease-outbreak-news/item/14-february-2019-lassa-fever-nigeria-en	February 2019

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89.	Dengue - Jamaica	https://www.who.int/emergencies/disease-outbreak-news/item/4-february-2019-dengue-jamaica-en	February 2019
90.	Gonococcal Infection – UK/Ireland	https://www.who.int/emergencies/disease-outbreak-news/item/30-january-2019-gonococcal-infection-uk-en	January 2019
91.	Hantavirus Pulmonary Syndrome – Argentina	https://www.who.int/emergencies/disease-outbreak-news/item/23-January-2019-hantavirus-argentina-en	January 2019
92.	Poliomyelitis - Congo	https://www.who.int/emergencies/disease-outbreak-news/item/08-january-2019-poliovirus-drc-en	January 2019
93.	Hantavirus Disease - Panama	https://www.who.int/emergencies/disease-outbreak-news/item/04-January-2019-hantavirus-panama-en	January 2019
94.	Typhoid Fever - Pakistan	https://www.who.int/emergencies/disease-outbreak-news/item/27-december-2018-typhoid-pakistan-en	December 2018
95.	Yellow Fever – The Netherlands	https://www.who.int/emergencies/disease-outbreak-news/item/18-December-2018-yellowfever-netherlands-en	December 2018
96.	Chikungunya Fever – Sudan	https://www.who.int/emergencies/disease-outbreak-news/item/15-october-2018-chikungunya-sudan-en	October 2018
97.	Cholera – Niger/Zimbabwe/Algeria	https://www.who.int/emergencies/disease-outbreak-news/item/05-october-2018-cholera-niger-en	October 2018
98.	Avian Influenza (H7N9) - China	https://www.who.int/emergencies/disease-outbreak-news/item/05-september-2018-ah7n9-china-en	September 2018
99.	Yellow Fever - France	https://www.who.int/emergencies/disease-outbreak-news/item/24-august-2018-yellow-fever-french-guiana-en	August 2018
100.	Poliovirus Type 2 - Nigeria	https://www.who.int/emergencies/disease-outbreak-news/item/08-august-2018-polio-nigeria-en	August 2018
101.	Nipah Virus - India	https://www.who.int/emergencies/disease-outbreak-news/item/07-august-2018-nipah-virus-india-en	August 2018
102.	Measles - Japan	https://www.who.int/emergencies/disease-outbreak-news/item/20-june-2018-measles-japan-en	June 2018

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103.	Cholera - Cameroon	https://www.who.int/emergencies/disease-outbreak-news/item/14-june-2018-cholera-cameroon-en	June 2018
104.	Measles - Brazil	https://www.who.int/emergencies/disease-outbreak-news/item/11-june-2018-measles-brazil-en	June 2018
105.	Poliovirus Type 2 - Somalia	https://www.who.int/emergencies/disease-outbreak-news/item/17-May-2018-polio-somalia-kenya-en	May 2018
106.	Dengue - France	https://www.who.int/emergencies/disease-outbreak-news/item/01-may-2018-dengue-reunion-en	May 2018
107.	Lassa Fever - Nigeria	https://www.who.int/emergencies/disease-outbreak-news/item/20-april-2018-lassa-fever-nigeria-en	April - 2018
108.	Cholera - Somalia	https://www.who.int/emergencies/disease-outbreak-news/item/29-march-2018-cholera-somalia-en	March 2018
109.	Listeriosis – South Africa	https://www.who.int/emergencies/disease-outbreak-news/item/28-march-2018-listeriosis-south-africa-en	March 2018
110.	Influenza (H1N2) – The Netherlands	https://www.who.int/emergencies/disease-outbreak-news/item/23-march-2018-seasonal-reassortant-ah1n2-netherlands-en	March 2018
111.	Rift Valley Fever - Gambia	https://www.who.int/emergencies/disease-outbreak-news/item/26-february-2018-rift-valley-fever-gambia-en	February 2018
112.	Cholera - Mozambique	https://www.who.int/emergencies/disease-outbreak-news/item/19-february-2018-cholera-mozambique-en	February - 2018
113.	Hepatitis A – United States	https://www.who.int/emergencies/disease-outbreak-news/item/07-june-2017-hepatitis-a-en	June 2017